

U.S. Department  
of Transportation

United States  
Coast Guard



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# ***REAL PROPERTY ASSET MANAGEMENT MANUAL***

COMDTINST M11011.10  
NOVEMBER 2001



Commandant  
United States Coast Guard

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COMDTINST M11011.10  
NOVEMBER 30 2001

## COMMANDANT INSTRUCTION M11011.10

Subj: REAL PROPERTY ASSET MANAGEMENT MANUAL

- PURPOSE.** This Manual addresses comprehensive programmatic policies, procedures, and standards for the administration of Coast Guard Real Property Assets. It is designed and intended as a guide for Real Property managers and staff at Civil Engineering Units, Maintenance & Logistics Commands (MLC), and Area Commands as well as their servicing legal staff. This however, does not preclude its use by field units in the preparation of real property or planning documents. As such, questions and requests for clarification on information addressed herein should be forwarded to the servicing real property staff.
- ACTION.** Area and district commanders, commanders of maintenance and logistics commands, commanding officers of headquarters units, assistant commandants for directorates, Chief Counsel and special staff offices at Headquarters shall ensure that the provisions of this Manual are followed.
- DIRECTIVE AFFECTED.** Sections 2-A through 2-D, and 2-H through 2-L of Chapter 2, and all of Chapter 5 of the Real Property Management Manual, COMDTINST M11011.9B are cancelled.
- DISCUSSION.** The Real Property Management Manual, COMDTINST M11011.9(series) has remained largely unchanged since 1988. Since then many new laws, restrictions, and policies have been enacted which necessitates an update to the manual. Sweeping changes are required and the process to incorporate them is tedious and cumbersome. To facilitate the process, the Real Property Asset Management Manual, COMDTINST M11011.10 has been created. As new chapters are developed, corresponding chapters in the old Real Property Management Manual, COMDTINST M11011.9(series) will be cancelled. As eluded to above, this first edition replaces most of chapter 2 and all of chapter 5 of the Real Property Management Manual, COMDTINST 11011.9(series).
- FORMS AND REPORTS.** Forms identified for use in this Manual are listed in Appendix B, and are available in Jetform Filler unless otherwise indicated.

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ASSISTANT COMMANDANT FOR SYSTEMS  
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# **CHAPTER 1. SHORE FACILITIES CAPITAL ASSET MANAGEMENT**

## **I. GENERAL**

### **A. Introduction**

1. The Real Property Asset Management Manual has been developed to integrate the SFCAM Strategic Plan and Guiding Principles into our real property policies and procedures. This integration is envisioned to generate the highest return on future Coast Guard facilities and infrastructure investment for the ultimate achievement of the Coast Guard's vision, mission, and strategic goals. This chapter provides a general description of the principles of Shore Facilities Capital Asset Management (SFCAM), as well as briefly describes the Coast Guard's strategies for implementation of SFCAM.
2. This Manual addresses comprehensive programmatic policy issues and procedures. It is intended to be used as a guide by Real Property managers and staff at Civil Engineering Units, Maintenance & Logistics Commands (MLC), and Area Commands as well as their servicing legal staff. This however, does not preclude its use by field units in the preparation of real property or planning documents. As such, questions and requests for clarification on information addressed herein should be forwarded to the servicing real property staff.

### **B. Background**

1. In 1996, the General Services Administration (GSA) published Bulletin D-240 to provide Federal Real Property Asset Management Principles to the heads of all Federal landholding agencies. These asset management principles are a guide for Federal agencies to use in managing their portfolio of real property assets in order to make sound asset management decisions, reduce costs, provide incentives for asset management improvement and maximizing portfolio performance. They are to be applied by all Federal real property asset managers throughout the life cycle of a real property asset. Enclosure (1) provides a basic outline of these principles.
2. Asset Management is the general term used in Bulletin D-240 to define the relationship between a real property holding entity, and the real property that such an entity holds an interest in. This relationship includes, but is not limited to, the financial management of such assets, the day-to-day management of the real property itself, and maintaining the satisfaction of the tenants that occupy the space that defines the real property asset. This relationship also covers the life cycle of a real property asset - its acquisition, utilization and disposal. Asset management succeeds when

organizations adopt effective asset management principles and use strategic planning as the framework for making real property asset management decisions.

3. SFCAM was identified in the FY 1999 Coast Guard Strategic Plan as one of the strategies to be used to provide the “right facilities”, at the “right time”, at the “right place”, and at the “right cost” to achieve the Coast Guard’s mission, vision, and strategic goals. SFCAM was formally introduced to the Coast Guard in ALCOAST 11/00 as a proactive strategic initiative for managing shore infrastructure assets. The purpose of the SFCAM initiative was to offer a mechanism to integrate planning, investing, using, and divesting decisions to better align shore facilities with operational and support requirements.

### **C. SFCAM Guiding Principles**

1. On September 5, 2000, the Shore Facilities Capital Asset Management Strategy, COMDTINST 11010.1(series) set forth seven guiding principles as the basic tenets of SFCAM policy that represent the framework around which the SFCAM program is built. These principles are enumerated below:
  - a. Ensure the Best Value Shore Capability for the Coast Guard
  - b. Match Shore Capabilities to Mission
  - c. Keep a Life Cycle Perspective
  - d. Encourage Cross-Functional Collaboration and Feedback
  - e. Provide Top-Down Direction
  - f. Use Information Technology Effectively
  - g. Foster Professional Development
2. The SFCAM Guiding Principles are consistent, and in alignment with the GSA Asset Management Principles set forth in Bulletin D-240. Specifically, they embrace GSA’s first three concepts namely: 1) “Use what we have first”, 2) “Buy only what we need”, and 3) Provide for “timely disposal” (see enclosure (1)). In addition, they recognize the shore facility infrastructure as an important corporate strategic resource that must be managed cost effectively for the collective benefit of the Coast Guard instead of only supporting locally defined unit command requirements. The policies and procedures outlined in this Real Property Asset Management Manual are designed to embrace these SFCAM goals and objectives.



#### **D. SFCAM Strategies**

1. The Coast Guard's SFCAM strategy is designed to institutionalize SFCAM through multiple interim future states. These future states will incrementally establish the new SFCAM system by: 1) considering the life-cycle and sustainability of buildings, land, and structures when addressing facility engineering and maintenance support requirements, 2) utilizing a corporate strategic and mission perspective for facility planning and funding, 3) institutionalizing federal asset management principles, and 4) assisting the Coast Guard in complying with the Government Performance and Results Act (GPRA), the Chief Financial Officer Act (CFO Act), and the Clinger-Cohen Act.
2. In addition to establishing the seven guiding principles of SFCAM, the Shore Facilities Capital Asset Management Strategy, COMDTINST 11010.1(series) also 1) designated the Assistant Commandant for Systems as the Corporate Asset Manager for Shore Facilities, 2) designated the MLC Commanders as the Regional Asset Managers, 3) established the Shore Infrastructure Management Board (SIM Board) consisting of senior program managers to proactively manage the shore facilities infrastructure portfolio through collaborative decision-making, and 4) delineated three SFCAM implementation strategies comprising the SFCAM Strategic Plan. These three strategies are summarized below:
  - a. Strategy #1 – Integrate and improve the Coast Guard's facility planning, investing, using, and divesting life-cycle processes to ensure they consider mission support needs, facility condition, and total ownership costs.
  - b. Strategy #2 – Implement and refine a transition plan to move the entire Coast Guard to a Shore Facility Capital Asset Management System through implementation of the new SFCAM processes.
  - c. Strategy #3 – Use meaningful performance measures to evaluate SFCAM system results and success.
3. The Shore Facilities Capital Asset Management initiative will redefine the manner in which the Coast Guard provides shore facilities capability to enable operational and logistical missions. The guiding principles, defined end states and implementation strategies provide the foundation upon which this initiative is being built. The new real property policies and procedures promulgated in this manual are intended to further institutionalize SFCAM into our everyday business processes.

## **CHAPTER 2. NON-FEDERAL REAL PROPERTY ACQUISITIONS**

### **I. GENERAL MATTERS**

#### **A. Introduction**

This chapter covers the acquisition of real property interests from non-Federal parties by purchase, donation, exchange, or condemnation. This chapter does not cover acquisitions from other Federal agencies or acquisitions of leasehold interests.

#### **B. Policy**

1. Before acquiring any real property from a non-Federal party, the Coast Guard must determine whether a new or expanded operational need can be met through better use of existing real property under the administrative control of the Coast Guard, other Department of Transportation (DOT) modal administrations, or other Federal agencies. This determination is made in an evaluation of the alternatives developed during the planning process in accordance with the Shore Facilities Project Development Manual, COMDTINST M11010.14, Chapter 5, and the Planning and Programming Manual – Volume II (Field Planning Manual), COMDTINST M16010.6(series).
2. Acquisitions of real property from non-Federal parties generally fall into two categories: 1) the acquisition of the “fee simple” and 2) the acquisition of lesser interests, such as easements. A “fee simple” acquisition is the acquisition of complete, permanent property ownership over the subject real property (see Glossary). Lesser interests in real property are those that do not involve control and possession of the subject real property (*e.g.*, an easement) or involve control and possession but are not permanent (*e.g.*, a leasehold). For all fee simple acquisitions, title to the property is conveyed to, and becomes vested in, the United States of America, rather than the DOT or the Coast Guard. Similarly, for acquisitions of lesser interests, the United States of America, as opposed to the DOT or the Coast Guard, holds the interest. In short, the United States of America owns real property, whereas the DOT/Coast Guard is simply the Federal agency that has administrative control and custody over the real property.
3. An interest in real property should be obtained through negotiation based on the fair market value of the subject real property, as established by an approved appraisal. Condemnation proceedings may be used only if negotiations fail or if the property title is defective and Commandant (G-CCS) has determined that the property should be acquired to meet an operational or other mission-related need.

**C. Authority.** In acquiring real property from non-Federal parties, the Coast Guard's primary authorities are:

1. Title 14, United States Code (U.S.C.), Section 92(f) which provides the Secretary of Transportation the authority to acquire real property by purchase or gift (this authority has been delegated to the Commandant by Title 49, Code of Federal Regulations (C.F.R.), Section 1.46(b), *see also* 49 C.F.R. § 1.4(a)(2) (1968));
2. 14 U.S.C. § 92(g) which provides the Secretary of Transportation the authority to exchange real property in part or in full payment for such other real property (this authority has been delegated to the Commandant by 49 C.F.R. § 1.46(b), *see also* 49 C.F.R. § 1.4(a)(2) (1968)); and
3. 14 U.S.C. § 670 which provides the Secretary of Transportation the authority to acquire real property, including condominium units, for use as Coast Guard family housing units (this authority is delegated to the Commandant by 49 C.F.R. § 1.46(kkk)).

**D. Delegation of Authority—General**

Unless otherwise specifically reserved by Commandant (G-SEC) or higher authority, Commanders, Maintenance and Logistics Commands (MLCs) are delegated authority to acquire real property from non-Federal entities in accordance with this Manual. Commanders, MLCs may redelegate this authority within the MLC organization, but in no instance shall the redelegation be to a level lower than Commanding Officer, Civil Engineering Unit (CEU) or its functional equivalent, except when specifically permitted by this Manual or Commandant (G-SEC). Any redelegation of authority must be in accordance with all applicable laws, regulations, and procedures.

## II. REAL PROPERTY ACQUISITION PROCESS

### A. Sequence

1. **General.** The process to acquire real property from a non-Federal party involves certain procedures and the satisfaction of certain requirements. The procedures and requirements for a standard fee simple acquisition (*e.g.*, by purchase), are described in this Section II. Section III of this Chapter describes the procedures and requirements for acquisitions of easement interests and for other specialized transactions (*i.e.*, acquisition of a fee simple subject to a reversionary interest, and acquisitions by exchange, by donation, by condemnation, and by use of the GSA relocation authority).
2. **Sequence.** The following sequence applies generally to acquisitions of real property (the staff primarily responsible for each step in the sequence is shown in brackets):
  - a. Preparation and submission of a planning proposal [servicing shore facility planning staff], including the completion of
    - (1) All required National Environmental Policy Act (NEPA) procedures [servicing shore facility planning staff],
    - (2) A contamination survey of the preferred site, and if necessary, confirmation sampling [servicing environmental staff],
    - (3) The required Office of the Secretary of Transportation (OST) pre-acquisition notification [servicing shore facility planning staff and Commandant (G-SEC)], and
    - (4) The required General Services Administration (GSA) pre-acquisition notification [servicing real property staff];
  - b. Approval of submitted planning proposal (PP) by Commandant (G-CRC), and if required, approval of the proposed acquisition by OST (note: PPs shall be submitted to Commandant (G-CCS) for subsequent routing to Commandant (G-CRC)) ;
  - c. Request funding from Commandant (G-SEC) for acquisition expenses [servicing real property staff];
  - d. Obtain legal description or survey [servicing real property staff];
  - e. Procurement of title evidence concerning subject real property [servicing real property staff];

- f. Appraisal of subject real property [servicing real property staff];
- g. Negotiations with owner [servicing real property staff];
- h. Preparation of option agreement [servicing real property staff];
- i. Preparation of preliminary opinion of title and other legal documents (*e.g.*, general warranty deed) [servicing legal staff];
- j. Closing [servicing legal staff];
- k. Notification to FINCEN of acquisition and Civil Engineering Data System (CEDS) entry [servicing real property staff]; and
- l. Preparation of final opinion of title [servicing legal staff].

## **B. Planning Proposal Preparation, Submission and Approval**

1. **General.** The Coast Guard can only acquire real property for which it has an operational or other mission-related need. In this regard, only the minimal amount of property necessary to satisfy the requirement should be acquired. Moreover, to minimize taxpayer costs, it is the policy of the Federal government (as set forth by applicable executive orders and GSA regulations) to satisfy agency real property requirements by obtaining available excess property under the control of other Federal agencies, to the extent feasible, as opposed to acquiring real property from non-Federal entities or private individuals.
2. **Planning Proposal.** An initial determination must be made by the unit concerned (through the servicing shore facility planning staff) that acquisition of additional real property is required. This requirement is documented through the Coast Guard planning process, in accordance with the Shore Facilities Project Development Manual (SFPDM), COMDTINST M11010.14(series) and the Planning and Programming Manual – Volume II, COMDTINST M16010.6(series). Any request for a waiver from the planning proposal process shall be submitted to, and must be approved by, Commandant (G-CRC). Certain easement acquisitions are exempt from the planning proposal requirement (see paragraph III.B.3.).
3. **OST Pre-Acquisition Notification.** In accordance with Chapter 5 of the SFPDM, the servicing shore facility planning staff shall prepare the Real Property Pre-Acquisition Notification (attached as enclosure (1) to this Chapter) and forward this notification to Commandant (G-SEC-1) before site selection studies are started. Commandant (G-SEC-1) will then notify the Office of the Secretary of Transportation (OST), Department of Transportation (DOT), of the Coast Guard real property requirement. OST shall determine whether there is any known existing real property, under the control of another DOT modal administration, that is available to satisfy the Coast Guard's real

property requirement. If OST reports that there are available properties, these properties shall be considered in addition to other candidate properties in the site selection analysis, and documented in the planning proposal.

4. General Services Administration (GSA) Pre-Acquisition Notification. The servicing shore facility planning staff shall also forward the Real Property Pre-Acquisition Notification form to the servicing real property staff. The servicing real property staff shall, in turn, notify the appropriate GSA regional office to ascertain whether any excess real property under the control of another Federal agency is available. If the GSA regional office reports that there are available excess properties, these properties shall be considered in addition to other candidate properties in site selection studies, and documented in the planning proposal.
5. Planning Proposal Requirements. The planning proposal shall provide a detailed analysis of the real property acquisition, including:
  - a. Identification of a preferred real property site;
  - b. Identification of alternative real property sites;
  - c. Discussion of alternatives to acquiring any real property interest;
  - d. The cost estimates associated with subparagraphs II.B.5.a.-c. above;
  - e. Consideration of environmental requirements and completion of appropriate analyses and documentation (see paragraphs II.C.2.-3.);
  - f. Discussion of the environmental contamination survey results, including the results of any confirmation sampling, for the preferred site and if appropriate, other leading sites (see paragraph II.C.4.-7.); and
  - g. Consideration of various planning obligations required by:
    - (1) The Rural Development Act of 1972, 7 U.S.C. § 2204b-1(b) (see paragraph II.B.6.); and
    - (2) Executive Orders 12072, “Federal Space Management,” and Executive Order 13006, “Locating Federal Facilities on Historic Properties in Our Nation’s Central Cities” (see paragraph II.B.7.).
6. Rural Development Act of 1972 (RDA). The RDA, as implemented by DOT Order 4320.1A, requires that all DOT modal administrations give “first priority to rural areas when locating new offices or other facilities where personnel are assigned.” Rural areas are defined as a “city, town, or unincorporated area that has a population of no more than 10,000 inhabitants [based on the latest census figures]” (7 U.S.C. § 1926(a)(7)). Specifically, the site selection analysis of the planning proposal shall include a discussion of the considerations that were given to rural area locations. If rural areas are not

considered, or alternatively, if a rural area location is not selected as the preferred site, then the analysis should provide the rationale for the exclusion or non-selection (*e.g.*, operational or mission requirements, consolidation, etc.). Please note that the RDA only applies to new offices or facilities. It does not apply to the consolidation of existing facilities.

7. Executive Order (E.O.) 12072 (“Federal Space Management”) and E.O. 13006 (“Locating Federal Facilities on Historic Properties in Our Nation’s Central Cities”). These executive orders apply when any urban site is considered for acquisition. Amongst urban sites, first consideration shall be given, wherever operationally appropriate and economically prudent, to sites located in a central business area and adjacent areas of similar character. The requisite GSA regional office should be able to identify central business areas within a given urban area. Within a central business area, Federal agencies are required to utilize and maintain, wherever operationally appropriate and economically prudent, historic properties and districts. The requisite GSA regional office or the local municipal government should be able to identify historic districts and properties within a given urban area. Any rehabilitation or construction that is undertaken must be architecturally compatible with the character of the surrounding historic district or properties. Consultations, as appropriate, shall be conducted with the State Historic Preservation Officer pursuant to the requirements of the National Historic Preservation Act, 16 U.S.C. §§ 470 *et seq.*
8. Planning Map. A planning map of the preferred real property site (and, if appropriate, any leading alternative sites) shall be prepared and submitted with the planning proposal. The planning map should show the following:
  - a. Exterior boundaries of the real property to be acquired;
  - b. The location of existing and proposed improvements and structures;
  - c. The location of existing or proposed rights-of-way for roads, utilities, etc.; and
  - d. A legend stating, “This map is illustrative only. It does not define the final approved project.”
9. Planning Proposal Submission and Commandant Approval. The planning proposal is submitted in accordance with the Planning And Programming Manual, COMDTINST M16010.67(series). Submissions shall be sent to Commandant (G-CCS) who delegates approval to Commandant (G-CRC). Approval of the submitted planning proposal is a prerequisite to the acquisition of the subject real property.
10. OST Approval. Upon Commandant (G-CRC) approval of the planning proposal, Commandant (G-SEC) will seek approval from OST if the proposed acquisition meets or exceeds OST threshold requirements, as identified in DOT Order 4300.2, as amended by DOT Real Property Bulletin RP B 94-01 (attached as enclosures (2) and (3) to this Chapter).

### C. Environmental Considerations

1. General. Environmental considerations are a primary concern when acquiring real property from non-Federal entities. If the proper precautions are not taken, the Coast Guard runs the risk of incurring enormous liability if it acquires contaminated property. In addition, if the decision to acquire the property is not based on an appropriate, documented NEPA analysis, the project could be halted as a result of legal actions brought against the United States under NEPA.
2. NEPA. The objective of NEPA is to ensure that Federal agencies conduct a complete analysis of environmental information in agency decision making—this environmental analysis must be completed and considered by the agency decision-maker before the final agency decision. NEPA also has the objective of ensuring that the public is involved in the decision making process. A detailed discussion of NEPA is set forth in the National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts Manual, COMDTINST M16475.1(series) (**hereafter referred to as the NEPA Manual**). By properly following the procedures set out in the NEPA Manual, the Coast Guard will have satisfied its statutory obligations under NEPA. The environmental analysis conducted pursuant to the NEPA Manual should encompass both the acquisition action itself and the Coast Guard's intended uses of the subject real property.
3. Other Environmental Laws and Executive Orders. The procedures and requirements of NEPA will help to identify potential obligations under other applicable environmental laws and executive orders. Enclosure (2) of the NEPA Manual sets forth a comprehensive list of these applicable laws and executive orders. In particular, Coast Guard acquisitions of real property, the Coast Guard's intended use(s) of such property, and any connected or related actions to either the acquisition or the intended uses, may trigger various obligations under the National Historic Preservation Act, the Endangered Species Act, the Coastal Zone Management Act, and the executive orders concerning floodplains, wetlands, and environmental justice. The servicing environmental and legal staffs shall ensure compliance with all applicable laws and executive orders. Commandant (G-SEC-3) and (G-LEL) are available for consultation.
4. Contamination Survey/Confirmation Sampling. Prior to Commandant (G-CRC) approval of the submitted planning proposal, the servicing environmental staff shall conduct a contamination survey of the preferred site, and if warranted, follow-on confirmation sampling. Contamination surveys have been referred to in prior guidance as "environmental site assessments." The contamination survey (and any confirmation sampling) is a systematic procedure to evaluate the preferred site for potential environmental contamination and liability based upon the Civilian Federal Agency Task Force (CFATF) protocols. The contamination survey is intended to prevent the unintended acquisition of contaminated property without knowledge of potential environmental costs, and to establish a baseline on the property's environmental condition prior to acquisition.



5. Contamination Survey-Requirements. Contamination surveys shall be conducted in accordance with the requirements of the Phase 1 Liability Assessment contained in Chapter 4 of the CFATF “Guide on Evaluating Environmental Liability for Property Transfers” (CFATF Document). The CFATF Document is available through the Internet at <http://es.epa.gov/oeca/fedfac/policy/eddado.pdf>. The Phase 1 Liability Assessment requirements include a review of existing records, visual survey of the site, appropriate interviews, and the production of a written report summarizing these actions. Alternative survey protocols are acceptable so long as they satisfy the requirements of the CFATF Document, Chapter 4, Phase 1 Liability Assessment.
6. Confirmation Sampling-Requirements. Physical sampling (*e.g.*, the taking of soil samples) is an additional level of environmental analysis of the subject real property. The purpose of physical sampling is to determine if actual contamination exists in the suspected areas noted in the contamination survey. If the contamination survey indicates the actual or likely presence of environmental contamination, confirmation sampling shall be conducted. When confirmation sampling is conducted, Chapter 5 of the CFATF Document, “Phase II – Confirmation Sampling,” shall be reviewed for guidance. The essence of confirmation sampling procedures is to take appropriate physical samples of suspected areas of contamination, conduct appropriate laboratory analysis, and generate a report. The specific characteristics of the suspected areas of contamination, and the Coast Guard’s intended uses of the property, will dictate the type and scope of sampling.
7. Housing/Berthing. If the subject real property is to be used for housing or berthing, the contamination survey, and if necessary the confirmation sampling, should include an analysis of asbestos, lead-based paint, PCBs, radon, and contaminated drinking water.
8. Filing. Any reports produced in conjunction with the contamination survey and confirmation sampling shall be held in the acquisition project file. Following closing, these documents will be permanently retained in the real property records.
9. Acquisition of Contaminated Property/Seller’s Warranties. If the environmental site assessment determines that the subject real property is contaminated, and if the Commandant (G-CRC) approves the acquisition despite the contamination, then Commandant (G-CRC) approval shall be conditional upon the owner of the subject real property executing certain warranties that will protect the United States from any liability arising from contamination present on the property at or prior to the date of acquisition (see paragraph II.I.2.).

#### **D. Funding**

1. Expenses associated with real property acquisition are normally funded from AC&I funds held by Commandant (G-SEC) (for information on proper use of AC&I funds, see the Civil Engineering Manual, COMDTINST M11000.11(series), and the Financial Resources Management Manual, COMDTINST M7100.3(series)). These expenses include, but are not limited to, land surveyor expenses, appraisals and appraisal reviews, title searches and insurance, option monies, the purchase price and closing costs (expenses associated with the preparation of the planning proposal are normally funded

with OE funds). Upon Commandant (G-CRC) approval of the planning proposal, and upon OST approval of the acquisition (if required), the servicing real property or environmental staff, as appropriate, may request funds for these expenses from Commandant (G-SEC) by message.

#### **E. Legal Description/Survey**

1. Upon Commandant (G-CRC) approval of the planning proposal, OST approval of the acquisition (if required), and release of the necessary funding, the servicing real property staff shall ensure that it has an accurate legal description or survey (see Glossary for definition of “Legal Description”) of the subject real property or take the appropriate steps to procure such a legal description from a professional land surveyor registered or licensed in the state in which the subject real property is located. When procuring a legal description, the servicing real property staff should contract for an American Land Title Association/American Congress on Surveying & Mapping (ALTA/ACSM) Land Title Survey that meets the Minimum Standard Detail Requirements of the ALTA/ACSM (these standards are available through the Internet at <http://www.acsm.net/alta99.pdf>).

#### **F. Title Evidence**

1. Title Evidence. Once an accurate legal description is obtained, the servicing real property staff will procure title evidence. Initially, title evidence is used to determine who is the fee simple owner of the real property (*i.e.*, who holds legal title to the real property) and if the real property is subject to any encumbrances (*e.g.*, mortgages, tax liens, easements, restrictive covenants, etc.) that may interfere with the Coast Guard’s proposed use of the real property or adversely affect the future marketability of the property.
2. Title Insurance—General. Procuring title insurance from a title insurance company is the typical method by which Federal agencies satisfy the statutory requirement (40 U.S.C. § 255) to obtain accurate title evidence. Title insurance procured by the Coast Guard must meet the Department of Justice requirements set forth in the Title Standards 2001 (this document is available through the Internet at <http://www.usdoj.gov/enrd/title.htm>). The title insurance company will initially issue a commitment or binder. If the Coast Guard decides to proceed with the acquisition, the title insurance company will then issue a title insurance policy upon conveyance of the property’s legal title to the United States. The primary purpose of the title insurance policy is to confirm that title to the real property has properly vested in the United States.
3. Title Insurance—Standardized Form. DOJ and the American Land Title Association (ALTA) have jointly adopted a standard form of title insurance policy to be used in all Federal real property acquisitions. The form policy is “ALTA U.S. Policy – 9/28/91.” This form policy is the only policy authorized for Coast Guard real property acquisitions, and includes two schedules, A and B, which are described below. The commitment or binder will have a similar format, including Schedules A and B.
4. Title Insurance—Commitment or Binder, Schedule A. The title insurance company will first issue preliminary title evidence, in the form of a standardized commitment or binder

(based upon the form ALTA U.S. Policy – 9/28/91). This commitment or binder will be issued before the Coast Guard acquires the property (*i.e.*, before the title conveys to the United States). Schedule A shall state or identify the following:

- a. The subject real property interest (*e.g.*, fee simple, easement);
- b. The legal description of the subject real property (*e.g.*, a metes and bounds description or a lot number of a surveyed plat);
- c. The current ownership of the subject real property (in the case of an acquisition of a pre-existing easement, the owner of the underlying land must be identified in addition to the owner of the easement interest);
- d. That the proposed insured is the “United States of America;”
- e. That the commitment’s or binder’s expiration date, if any, should be no less than two years after the date of issuance (a commitment or binder with no expiration date is preferable); and
- f. That the title insurance policy will be issued in the form of ALTA U.S. Policy – 9/28/91.

5. Title Insurance—Commitment or Binder, Schedule B. Schedule B of the binder or commitment lists encumbrances upon the subject real property, such as mortgages, tax or mechanics liens, easements, or restrictive covenants, held by persons or parties other than the landowner. These encumbrances have been recorded in the local county’s or municipality’s land records office or registry. Schedule B should identify the name of the person or entity that holds the encumbrance. The encumbrances listed on Schedule B will not be covered by the title insurance policy; they are referred to as “exceptions” (in general, the title insurance company is liable for any encumbrances which it fails to list in Schedule B). The Coast Guard must ensure that those encumbrances which may interfere with the Coast Guard’s planned use of the real property, or which may be an impediment to future marketability of the real property, are satisfied, discharged, released, or otherwise eliminated before or at the conveyance of title to the United States. Schedule B should accurately list all tax liens, including those not yet due and payable, upon the subject real property. This information should identify all taxing authorities that have jurisdiction over the real property for the levy of taxes, and for each lien, the lien date and the amount of the assessment if known, or if the amount is not known, a statement noting that taxes are not yet due and payable.
6. Title Documents. The title insurance company shall provide complete, legible copies, or a sufficient abstract or digest, of all instruments referenced in the binder or commitment, including the deed or instrument by which the current owner acquired the subject real property. The copies, abstract or digest shall be attached to, or otherwise provided with, the commitment or binder.

7. Title Insurance—Commitment/Binder and Policy Issued By Same Company. The same title insurance company shall issue the commitment or binder and the title insurance policy. The servicing legal staff must approve any exception to this requirement. This requirement avoids the situation where the first company issues the commitment or binder listing certain encumbrances, the Coast Guard ensures that these encumbrances are satisfied, discharged, released, or eliminated, and then the second company issues the title insurance policy that lists additional encumbrances not listed on the commitment or binder. In such cases, the Coast Guard may not be able to satisfy, discharge, release or eliminate the encumbrances listed by the second company as title has already passed to the United States (the Coast Guard would then have to consider condemning the encumbrances, a time-consuming and expensive proposition).
8. Title Insurance—Policy, Schedule A. Upon title conveying to the United States, the title insurance company will issue the policy in the form of “ALTA U.S. Policy – 9/28/91.” Schedule A of the policy shall show or identify:
  - a. The insured as the “United States of America;”
  - b. The owner of the subject real property as the “United States of America;”
  - c. The policy’s effective date as of, or subsequent to, the date the deed was recorded in favor of the United States;
  - d. The subject real property interest (*e.g.*, fee simple, easement);
  - e. A description of the subject real property (usually a metes and bounds description or a lot number of a surveyed plat); and
  - f. The amount of insurance (see paragraph II.F.10.).
9. Title Insurance—Policy, Schedule B. Schedule B of the policy will list those third party encumbrances that will not interfere with the planned Coast Guard use of the real property or impair the real property’s future marketability. Those encumbrances which would interfere with the planned Coast Guard use of the property, or impair the real property’s future marketability must have been satisfied, discharged, released, waived, or otherwise eliminated before or at the conveyance of title to the United States (see subsection II.K.). Such encumbrances must not be shown on Schedule B of the policy.
10. Title Insurance Policy—Liability Amount. DOJ’s Title Standards 2001 requires that the amount of the insurance the policy provides (the liability amount) shall not be less than a sum that is 50% of the purchase price. If the purchase price is more than \$100,000, however, the liability amount shall not be less than a sum that is 50% of the first \$100,000 and 25% of that portion of the purchase price in excess of that amount. A liability amount equal to the purchase price is always acceptable, and is required where state insurance regulations prohibit the issuance of title policies for less than the purchase price.

- a. No cost or Nominal Cost Acquisitions. In the case of a donation or nominal cost acquisition (for both fee simple acquisitions and easements), the liability amount shall be equal to the appraised value of the subject real property, or if the appraisal has been waived or is not required (see paragraph II.G.1), to the property's estimated value. The estimated value can be based upon a tax assessment or the informal opinion of a local real estate appraiser or agent.
- b. Planned Improvements. The estimated value of planned improvements shall not be included in the liability amount.

## **G. Appraisals**

1. General. Once the title insurance company issues the commitment or binder (see paragraphs II.F.4-5.), the process to conduct an appraisal of the subject real property can begin. An appraisal is an evaluation of the fair market value of the subject real property as of a specific date, supported by the presentation and analysis of relevant market information. Department of Transportation regulations at Title 49, Code of Federal Regulations (C.F.R.), Part 24, require the appraisal of the subject real property before it can be acquired *unless* the property is being donated (see subsection III.D.) *and* the owner releases the Coast Guard from the appraisal requirement *or* the fair market value is estimated to be \$2,500.00 or less, based on a review of available data. The appraisal is conducted, and the appraisal report is prepared, independently and impartially by a qualified appraiser. The appraisal establishes a baseline for negotiating with the owner of the property and ultimately, the purchase price. The servicing real property staff is responsible for procuring the appraisal.
2. Legal Description and Title Insurance Commitment or Binder. The servicing real property staff shall provide a copy of the legal description and title insurance commitment or binder to the appraiser to ensure an accurate appraisal.
3. Notice to the Owner. The servicing real property staff shall notify the owner of the Coast Guard's interest in acquiring the subject real property. The notice shall be in writing and shall state the Coast Guard's obligation to obtain an appraisal of the property. The notice shall also inform the owner of his or her right to accompany the appraiser during the appraiser's visit(s) to the property. The appraiser may perform this notice requirement (see paragraph II.G.9.)
4. Qualified Appraiser. The term "qualified appraiser" shall mean an independent contractor who has the necessary qualifications, ability, education, and experience to conduct the appraisal and prepare the appraisal report. Qualified appraisers are usually state-certified or state-licensed, and must be certified in accordance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), 12 U.S.C. § 3331 *et seq.* (if necessary, the servicing real property staff shall consult with the servicing legal staff as to questions concerning FIRREA certification). In addition, the appraiser may be required to testify as an expert witness in the event the United States acts to condemn the property. For this reason, the servicing real property staff may wish to contact the local U. S. Attorneys Office for a list of appraisers in the relevant

geographic area that have been found acceptable to the DOJ.

5. Qualified Appraiser/Restrictions. The appraiser must have no direct or indirect present or contemplated future personal interest in the subject real property or in any monetary benefit from its acquisition. The appraiser's compensation shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property that has been the subject of an appraisal by that appraiser.
6. Appraisal Report Requirements. In accordance with Department of Transportation regulations (49 C.F.R. § 24.103), an appraisal report shall:
  - a. Be prepared independently by a qualified appraiser; and
  - b. Be prepared in accordance with the provisions of the Interagency Land Acquisition Conference's Uniform Appraisal Standards for Federal Land Acquisitions (5<sup>th</sup> ed. 2000) (this document is available over the Internet at <http://www.usdoj.gov/enrd/land-ack/yb2001.pdf>), including but not limited to, the appraiser's signed and dated certification (see section A-4 of the Uniform Appraisal Standards (pp. 9-10) for the certification requirements).
7. Influence of the Project. The appraiser shall disregard any decrease or increase in the subject real property's fair market value caused by the Coast Guard project for which the property is to be acquired, other than that due to physical deterioration within the reasonable control of the owner. The policy rationale for this requirement is that the property owner should not be penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense resulting from an increase in value caused by the proposed project (see 49 C.F.R. Part 24.103(b) and Uniform Appraisal Standards, section A-14, p. 18). Recent rezoning by local government entities in anticipation of the Coast Guard project must be disregarded (see Uniform Appraisal Standards, section A-13h, p. 16).
8. Appraisal of Easements. Easement interests shall be appraised in accordance with the procedures set forth above. Easement appraisals are discussed generally in section B-20 of the Uniform Appraisal Standards (pp. 63-64). See also section B-11 of the Uniform Appraisal Standards (pp. 50-51), as easement acquisitions require the "before and after" method of valuation.
9. Appraisal Contract. Appraisal contracts shall be in writing. Appraisal contracts shall include the following:
  - a. A requirement that the appraiser shall give written notice to the owner that he or she (or the owner's representative) may accompany the appraiser during the inspection of the property;
  - b. A requirement that the appraisal be conducted, and the appraisal report be prepared, in accordance with the Uniform Appraisal Standards; and

- c. A fee schedule for updating the appraisal and for the appraiser's testimony at trial or by deposition in the event condemnation proceedings are initiated.
10. Appraisal Review/General. A qualified review appraiser must certify that the appraisal meets the requirements described in paragraphs II.G.3.-9. Members of the servicing real property staff may serve as a review appraiser, if qualified in accordance with paragraphs II.G.4.-5. The review appraiser shall determine whether the appraisal report, including any supporting documentation, demonstrates the soundness of the appraiser's opinion of value. In making such determination, the review appraiser shall consult Section C of the Uniform Appraisal Standards (pp. 69-75). The appraisal review may be either a desk review or a field review (see Uniform Appraisal Standards, section C-2, pp. 71-72).
  11. Appraisal Review/Approval. The review appraiser shall approve of the appraisal report or identify any necessary corrections or revisions. If the initial appraiser is directed to make any corrections or revisions, the review appraiser shall review the corrected or revised appraisal report prior to approval. If the review appraiser is unable to approve the appraisal report, and an additional appraisal is not practical, the review appraiser may prepare and submit an appraisal report and supporting documentation. The approval authority for appraisal reports prepared by review appraisers shall be the chief of the servicing real property staff or higher authority, as appropriate.
  12. Review Appraiser Certification. If the review appraiser approves the appraisal, then the review appraiser shall prepare and execute a statement setting forth the review appraiser's basis for approval. The review appraiser's statement shall be prepared in accordance with section C-8 of the Uniform Appraisal Standards (p. 75). The review appraiser shall forward this certification to the servicing real property staff.
  13. Just Compensation. The appraised fair market value of the subject real property, as approved by the review appraiser, shall be the basis for establishing "just compensation." Just compensation is the amount the owner is legally entitled to when the United States acquires the owner's property by either purchase or condemnation. When acquiring the property by purchase, just compensation is the final amount agreed upon after negotiations (see paragraphs II.H.10.-13. below). In no event shall just compensation be less than the approved appraisal of the fair market value of the subject real property; thus, the appraised fair market value establishes the minimum amount, or the "floor," of just compensation (see 49 C.F.R. § 24.102(d)).
  14. Appraised Value Exceeds Budgeted Amount. If the appraised fair market value exceeds the amount budgeted for the proposed acquisition, then the servicing real property staff or the unit concerned, as appropriate, must contact Commandant (G-SEC) for further direction before proceeding with the acquisition to allow for an attempt to reprogram funds or a reevaluation of the scope of work associated with the acquisition.
  15. Prohibition Against Disclosure of Appraisal Information. Appraisals are obtained solely for use by the government and may form the basis of testimony in condemnation proceedings. The disclosure of appraisal data by an appraiser may seriously jeopardize the United States in any trial proceedings. The appraiser shall be instructed not to

divulge the contents of the appraisal report and any supporting or ancillary documentation except to the servicing real property and legal staffs, or in condemnation proceedings, to authorized staff of the U.S. Attorney's Office or the DOJ. Release of the contents of the appraisal by the real property staff to individuals other than the above authorized government personnel is generally prohibited. The servicing legal staff, in consultation with Commandant (G-LGL), must approve any exceptions to this general prohibition.

## **H. Negotiations With The Property Owner**

1. **Designation of Representative.** After the review appraiser has approved and certified the appraisal, the Commander, MLC may designate a representative to initiate and conduct acquisition negotiations with the owner. Typically, members of the servicing real property staff serve in this capacity.
2. **Policy.** It is Coast Guard policy that every reasonable effort shall be made to acquire the property without resorting to condemnation. The purpose of negotiations is to establish just compensation for the real property to be acquired. When an agreement is reached, a written option agreement is prepared (see subsection II.I.).
3. **Relocation Payments and Assistance.** The Coast Guard must make all required relocation payments and provide all required relocation assistance and relief to displaced persons in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended (42 U.S.C. §§ 4601 *et seq.*), and the Department of Transportation's implementing regulations at 49 C.F.R. Part 24. In order to qualify as a displaced person, an individual or private sector entity must meet certain criteria, as set forth in the implementing DOT regulations (49 C.F.R. § 24.2). In general, a displaced person is one who moves, or moves his or her personal property, from the subject real property as a result of the government acquisition. The servicing real property staff, in consultation with the servicing legal staff, shall ensure compliance with the URA and the applicable DOT regulations. Specific categories of individuals and entities that are ***not*** considered displaced persons are described in the subparagraphs below (consult the DOT regulations, at 49 C.F.R. § 24.2, for a comprehensive listing).
  - a. **Owner-occupants.** Owner-occupants are not considered displaced persons (although the tenants of such owner-occupants generally qualify), if the acquisition meets all of the following conditions:
    - (1) No specific site or property needs to be acquired, although the site selection studies may have been limited to a general geographic area (where the Coast Guard wishes to purchase more than one site within a geographic area, all owners are to be treated similarly);
    - (2) The subject real property is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits;



- (3) The Coast Guard will not initiate a condemnation action in the event negotiations fail to result in an amicable agreement, and the owner is so informed in writing (such written notice should be provided when the initial offer is made to the owner and in addition, if negotiations result in an amicable agreement to purchase the subject real property, the standard option agreement should be modified accordingly, see subparagraph II.I.2.a.); and
  - (4) The Coast Guard informs the owner, via the initial offer, of what it believes to be the fair market value of the subject real property (*i.e.*, the just compensation based upon the appraisal, see paragraph II.G.13.).
- b. State and Local Governments. State and local governments that convey real property to the Coast Guard are not considered to be displaced persons.
- c. Grantors of Easements. Persons who convey easements to the Coast Guard are generally not considered to be displaced persons provided that such persons are not required to relocate permanently as a result of the project for which the easement was acquired.
- d. Illegal Aliens. An alien not lawfully present in the United States is not considered a displaced person.
- e. Unlawful Occupant. A person who has been determined to be in unlawful occupancy of the subject real property prior to the making of the initial offer is not considered to be a displaced person.
4. Title Evidence. Prior to initiating negotiations, the servicing real property staff should ensure that the individual claiming to be the owner does in fact hold title to the subject real property. The servicing real property staff should also be familiar with any encumbrances that may affect the value of the property or its use to the Coast Guard. Schedule B of the commitment or binder issued by the title insurance company should provide this information (see paragraph II.F.5.).
5. Legal. The servicing legal staff shall be available to assist the Coast Guard representative, and shall be consulted in those cases in which an attorney actively represents the owner. This consultation must occur prior to making any offer or commitment to the owner.
6. Negotiation Guidelines and Procedures. The following negotiation guidelines and procedures apply to Coast Guard real property acquisitions:
  - a. Coercive actions will not be taken to obtain agreements;
  - b. The full amount of the just compensation (*i.e.*, the agreed purchase price) is paid to the property owner or is otherwise made available to the owner, prior to taking physical possession of the property or requiring that the property be vacated by the owner; and

- c. Coast Guard representatives must refrain from oral promises and understandings.
7. Site Inspection. Before concluding negotiations with the owner, the Coast Guard representative must make a physical inspection of the premises to ensure that the real property described in the appraisal is the exact property to be acquired, that improvements have not been removed or destroyed, and nothing has occurred to enhance or decrease the value of the real property. The Coast Guard representative must also ascertain the existence of any third party interests or claims that were not recorded in the local land records, and as such, were not described in Schedule B of the title insurance commitment or binder (see paragraph II.J.5.). The owner shall be provided adequate notice of the inspection and be allowed to accompany the Coast Guard representative during his or her inspection of the subject real property.
  8. Owner's Expenses. The Coast Guard representative shall determine if there are any encumbrances against the property based upon Schedule B of the title insurance commitment or binder and the site inspection of the property. It is the obligation of the owner to discharge those encumbrances that will adversely impact the future marketability of the property or will interfere with the Coast Guard's intended use of the property (for example, the owner must satisfy or otherwise discharge any mortgage encumbering the property).
  9. Subsurface Rights. The owner of the surface land and improvements usually holds subsurface rights (or mineral rights). These rights should be acquired with the surface rights. When the subsurface rights are held by a third party, the servicing real property staff will determine whether the subsurface rights should be acquired to protect the Coast Guard's interest in the surface rights. Alternatively, an agreement can be obtained from the holder of the subsurface rights in which the subsurface owner agrees not to interfere with the Coast Guard's planned use of the surface nor take any action that will undermine the physical integrity of the surface.
  10. Just Compensation. Just compensation shall initially be set at the subject real property's fair market value as established by the appraiser and approved by the review appraiser. This amount shall be the amount initially offered to the owner.
  11. Initial Offer. The initial offer to purchase the real property will be made as follows:
    - a. The owner will be personally served or sent by certified or registered first-class mail, return receipt requested, a notice that the Coast Guard is interested in purchasing the property;
    - b. The notice will include a statement, which shall:
      - (1) State the amount of just compensation (which shall be the fair market value as established by the appraiser and approved by the review appraiser);
      - (2) State the amount of compensation for damages, if any, to any remaining real property;

- (3) Set forth an accurate legal description of the real property and the interest in the real property to be acquired (*e.g.*, fee simple, easement); and
  - (4) Identify the improvements (including removable building equipment and trade fixtures) which are considered to be part of the real property for which the offer is made (where appropriate, the statement shall identify any separately held ownership interest in the property, *e.g.*, a tenant-owned improvement, and indicate that such interest is not covered by the offer);
- c. The notice will identify the incidental expenses to be reimbursed the owner (see paragraph II.H.15.);
  - d. If the Coast Guard does not intend to initiate a condemnation action in the event the negotiations do not result in an amicable agreement, the notice should so state (see clause (3) of subparagraph II.H.3.a.);
  - e. The notice will identify the Coast Guard representative as the point of contact, and shall include the representative's business address, telephone number, and E-mail address; and
  - f. The owner shall be allowed a reasonable period of time to consider the offer and obtain professional advice or assistance.
12. Increasing the Amount of Just Compensation. If the owner does not accept the initial offer, then Commanders, MLCs are authorized to increase the just compensation amount by 15% provided that the adjusted amount does not exceed the amount budgeted for the acquisition. If the adjusted amount exceeds the budgeted amount, then the servicing real property staff shall contact Commandant (G-SEC) for further direction (see paragraph II.G.14). Increasing the amount of just compensation requires a finding that such an increase is reasonable, prudent, and in the public interest (consult 49 C.F.R. § 24.102(i) and App. A).
13. Rejection of Offer of Increased Just Compensation. If the owner rejects the increase in just compensation as authorized in paragraph II.H.12., the servicing real property staff shall consult with Commandant (G-SEC) (the appraisal file, negotiation records, and projected condemnation costs should be forwarded to Commandant (G-SEC)). Commandant (G-SEC) shall determine whether to continue negotiations and possibly increase the amount of just compensation further, to proceed with condemnation (see subsection III.E., "Acquisition By Condemnation"), or to not proceed with the acquisition.
14. Environmental Warranties. If the contamination survey or confirmation sampling indicates that the property is or is likely to be contaminated, then the owner must execute certain warranties that will protect the United States from any liability arising from contamination present on the property at or prior to the date of acquisition. These warranties are to be attached to or otherwise incorporated into the option agreement (see subsection II.I.). The warranties are attached as enclosure (4) to this Chapter. If the

owner refuses to execute the warranties, then the servicing real property staff shall notify Commandant (G-SEC). Commandant (G-SEC), in consultation with Commandant (G-LEL), shall determine whether to proceed with the acquisition. If Commandant (G-SEC) elects to proceed with the acquisition, Commandant (G-CRC) approval shall be obtained.

15. Owner's Expenses. At closing or as soon as practical after the date of payment of the purchase price, the owner shall be reimbursed for fair and reasonable expenses such as:
  - a. Recording fees, transfer taxes and similar expenses incidental to conveying such real property (the Coast Guard, however, shall not pay costs solely required to perfect the owner's title to the real property or to reimburse the owner for any capital gains or similar income tax resulting from the sale of the subject real property);
  - b. Penalty costs for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering such real property; and
  - c. The pro rata portion of real property taxes paid by the owner which are allocable to a period subsequent to the date of title vesting in the United States or the effective date of possession of such real property by the United States, whichever is earlier.
16. Negotiation Records. A written record should be made of each contact with the property owner or representative within 3 business days after each such contact. The information should include the date and place of contact, persons present, the amount of any offer or counteroffer, and other pertinent data.
17. Donation. Payment of just compensation is not required if the owner is willing to donate the property and is fully informed of his right to an appraisal and payment of fair market value (see subsection III.D.).

## **I. Option Agreement**

1. General. If the negotiations between the Coast Guard's representative and the owner result in an agreement for purchase of the property, then the parties shall **enter** into an option agreement. The option agreement provides the Coast Guard with an exclusive right or option to purchase the property within a specified time in exchange for the payment to the owner of a sum that amounts to no more than a relatively small percentage of the purchase price. The option agreement does not bind the government to acquire the property unless it is **exercised** within the specified term (please note that there is a distinction between "entering" into an option agreement and "exercising the option"). If the Coast Guard **exercises** the option within the specified time, the Coast Guard commits to acquire the property and the amount paid to the owner for the option is applied to the purchase price. If the Coast Guard **does not exercise** the option within the specified time, the option **expires** and the Coast Guard **forfeits** the amount paid to the owner for the option.

2. Preparation of Standard Option Agreement. The servicing real property staff shall prepare, and the servicing legal staff shall review, and if appropriate, modify, the standard option agreement attached as enclosure (5) to this Chapter 2 (see subparagraphs II.I.2.a.-b. below). In addition, if the servicing environmental staff has determined that the subject real property is contaminated (through the contamination survey and any confirmation sampling), then the servicing legal staff shall insert or otherwise incorporate into the standard option agreement, warranties as to the environmental condition of the subject real property and the responsibility of the owner for any existing prior contamination. See enclosure (4) for the standard environmental warranty provisions.
  - a. Displaced Person/Voluntary Transaction Exception. If the Coast Guard has no intention of acquiring the subject real property by condemnation, and if the owner qualifies, or has the possibility of qualifying, as a displaced person per paragraph II.H.3. above, then paragraph (7) of enclosure (5) should be deleted to ensure that the Coast Guard can rely on the owner-occupant voluntary transaction exemption from the URA requirements (see subparagraph II.H.3.a.).
  - b. Other Modifications. The servicing legal staff may make other modifications to the standard option agreement as warranted by the needs of the subject acquisition. The servicing legal staff shall, however, consult with Commandant (G-LGL) in regard to substantial deviations from the standard option agreement.
3. Option Amount. The maximum amount paid for an option shall not exceed 20% of just compensation for the real property. The Coast Guard representative shall have authority to negotiate and set the option amount. The option money should be deposited in an escrow or other appropriate account. If the option is exercised, all option money must be applied to the purchase price.
4. Option Term. The option term begins when the Coast Guard and the owner enter into the option agreement and ends when the Coast Guard exercises the option. There is no required period for the term of the option agreement, however, it must reflect the current project status. In this regard, the term must be of an adequate duration to allow sufficient time to perform any engineering studies on the site, obtain funding, resolve any issues identified by the preliminary opinion of title, comply with any environmental requirements, and complete any other necessary procedures.
5. Entering Into An Option Agreement—Requirements. The servicing real property staff must ensure that all of the requirements or procedures set forth in subsections II.B-II.H. of this chapter have been satisfied or followed before the Coast Guard can enter into the option, including but not limited to:
  - a. Compliance with all procedures and the requirements of the NEPA Manual, COMDTINST M16475.1 (series);
  - b. Completion of the contamination survey and if warranted, any appropriate confirmation sampling;

- c. Commandant (G-CRC) approval of the planning proposal;
  - d. OST approval of the proposed acquisition, if applicable;
  - e. An adequate legal description for the subject real property has been obtained;
  - f. The preliminary title insurance, in the form of a title insurance commitment or binder, has been obtained, and the commitment or binder shows that the owner holds good title to the subject real property;
  - g. The subject real property has been appraised, and the appraisal has been approved by the review appraiser, in accordance with the procedures set out in subsection II.G. above;
  - h. The Coast Guard and the owner have agreed upon a purchase price, in accordance with the procedures set out in subsection II.H., and the Coast Guard and the owner have agreed upon an option amount in accordance with the requirements of paragraph II.I.3., “Option Amount,” above;
  - i. The owner has agreed to execute the standard environmental warranty provisions if the subject real property is contaminated or is likely to be contaminated, or in the alternative, Commandant (G-CRC) has approved the acquisition despite the owner’s refusal to execute such warranty provisions; and
  - j. The required funding for the option has been obtained and is available for obligation.
6. Entering Into An Option Agreement—Commander, MLC Review and Approval. Once the option agreement is prepared and the requirements set forth in paragraph II.I.5. have been satisfied, the Commander MLC shall review the agreement. If approved by the Commander, MLC, the servicing real property staff shall mail, by certified mail, return receipt requested, the option agreement to the owner for signature. The owner will then sign the option agreement and return the signed original to the servicing real property staff. The servicing real property staff shall ensure that the option money has been deposited into the appropriate escrow or other account within a reasonable period of time from the Coast Guard’s receipt of the option agreement bearing the owner’s signature.
7. Option Exercise—Requirements. The servicing real property staff must ensure that the following requirements or procedures have been satisfied or followed before the Commander, MLC can exercise the option:
- a. The servicing legal staff has issued a preliminary opinion of title approving the acquisition (see subsection II.J.); and
  - b. The required funding for the balance of the purchase price has been obtained and is available for obligation;
8. Option Exercise. Upon the satisfaction of the requirements listed in paragraph II.I.7. above, the Commander, MLC exercises (*i.e.*, signs) the option. Upon the option exercise

by Commander, MLC, the funds available for the balance of the purchase price shall become obligated—**these obligated funds, however, shall not be disbursed until closing, see paragraph II.K.9.** The servicing real property staff shall forward the original of the exercised option agreement to the servicing legal staff and send a copy to the owner. The servicing legal and real property staffs shall then prepare for the closing (see subsection II.K.).

#### **J. Preliminary Opinion of Title (POOT), Deed, and Other Legal Documents**

1. **General.** A POOT is a legal opinion on the state of the subject real property's title, rendered by the servicing legal staff prior to the property's acquisition by the Coast Guard. The POOT evaluates the title based upon the title evidence prepared by the title insurance company. In this regard, the POOT identifies items for further action, such as obtaining the discharge or release of encumbrances that may adversely affect the Coast Guard's intended use of the property, and sets forth curative instructions. Once the conditions set forth in the POOT have been met, the Coast Guard may acquire the subject real property on behalf of the United States (*i.e.*, proceed to closing). A POOT is required for all real property acquisitions from non-Federal parties, including donations and exchanges, as well as by purchase. Similarly, a POOT is required regardless of whether a fee simple or an easement interest is being acquired. The servicing legal staff prepares the POOT based upon the documentation in the preliminary title assembly (see paragraph II.J.3. below); MLCLANT(l) or MLCPAC(l), as appropriate, will then execute the POOT. In cases involving the acquisition of real property subject to a reversionary interest, the POOT is prepared by the DOJ.
2. **Authority.** The authority to issue title opinions, including POOTs, has been delegated to the Chief Counsel (Commandant (G-L)) from the Attorney General of the United States, via the General Counsel of DOT. The Chief Counsel has in turn delegated this authority to MLCLANT(l) and MLCPAC(l) respectively per Commandant (G-L) memo 11011 of 18 August 1997. Further delegation within an MLC(l) organization requires the Chief Counsel's approval (via Commandant (G-LGL)). The issuance of the POOT by the proper legal authority satisfies the statutory requirement of 40 U.S.C. § 255 (no public money can be expended to acquire the subject real property unless the Attorney General or his or her delegatee has given prior written approval of the sufficiency of the title).
3. **Submission of a Preliminary Title Assembly.** The submission of the preliminary title assembly is a prerequisite to the preparation of the POOT. Upon entering an option to purchase real property, the servicing real property staff shall prepare and forward the preliminary title assembly to the servicing legal staff.
  - a. **Preliminary Title Assembly-Contents.** The preliminary title assembly will include the following items:
    - (1) Option agreement signed by the owner of the subject real property;
    - (2) Title evidence in the form of an insurance commitment or binder from a DOJ approved title insurance company, stating that the title insurance policy will be

issued in the form “ALTA U.S. Policy – 9/28/91;”

- (3) An accurate legal description of the property;
  - (4) Map or plat of the subject real property;
  - (5) A draft Certificate of Non-Interference;
  - (6) A draft Certificate of Inspection and Possession; and
  - (7) Corporate documentation, if the owner of the subject property is a corporation (see paragraphs II.J.6.-7., below);
- b. Preliminary Title Assembly Instructions. Assemble the documentation in the order listed in the subparagraph above. Tab the assembled documents and prepare a table of contents; fasten the assembled documents into a binder. State the project name, the party selling or otherwise conveying the property, and the property’s location (city, county and state) on the binder’s cover. The servicing real property staff shall then forward the assembly to the servicing legal staff. The servicing real property staff shall retain a copy of the assembly for its records.
4. Certificate of Non-Interference. The servicing real property staff shall prepare the Certificate of Non-Interference. The Certificate of Non-Interference concerns those encumbrances upon the property, namely easements or other interests held by third parties, that have been recorded in the various public records offices (*e.g.*, a county registry of deeds) and as such, identified in Schedule B of the title insurance commitment or binder. Specifically, the Certificate of Non-Interference lists those encumbrances that will not interfere with the Coast Guard’s planned or intended use of the property nor adversely affect the real property’s future marketability, as determined by the servicing real property staff or the unit concerned. Examples of such encumbrances may be access and utility easements and in the case of residential property acquired for military family housing, restrictive covenants limiting the use of the property to residential uses.
- a. Encumbrances that will “cloud” title to the property, by adversely affecting the property’s future marketability, or that will interfere with the Coast Guard’s planned or intended use of the property, ***shall not*** be listed on the Certificate of Non-Interference. Examples of encumbrances that will adversely affect marketability include mortgages and mechanic’s or tax liens. Examples of encumbrances that will interfere with the Coast Guard’s planned or intended use include restrictive covenants, easements and similar third party interests (*e.g.*, an easement that permits an oil and gas lessee to conduct drilling upon the surface of the property). Such encumbrances must be discharged, released, waived or otherwise extinguished before the acquisition of the subject real property.
  - b. The Certificate is executed by the closing attorney (see subsection II.K.). Enclosure (6) to this chapter is a sample Certificate of Non-Interference.



5. Certificate of Inspection and Possession. The servicing real property staff shall prepare the Certificate of Inspection and Possession, a document required by the DOJ. The Certificate of Inspection and Possession concerns unrecorded encumbrances upon the property (*i.e.*, not identified by Schedule B of the title insurance commitment or binder).
- a. The Certificate sets forth a statement by a duly authorized representative of the Coast Guard (either a member of the servicing real property staff or the closing attorney), that he or she has:
    - (1) Physically inspected the property to be acquired;
    - (2) Ascertained the rights or claims of any and all persons or entities occupying, using, or otherwise claiming possession of the subject real property or any part thereof; and
    - (3) Determined that there is no evidence of any unrecorded deed, mortgage, lease, contract, or other instrument adversely affecting title to the subject real property.
  - b. If, after inspection of the property, it is determined that sufficient evidence of unrecorded rights, claims, or encumbrances exists, and the servicing real property staff determines that such rights, claims, or encumbrances impairs the future marketability of the property's title or interferes with the Coast Guard's planned or intended use of the property, then the right, claim, or encumbrance must be discharged, released, waived or otherwise extinguished (for example, by obtaining a quitclaim deed from the party in question). Examples of such unrecorded rights, claims, or encumbrances may include the presence of squatters, encroachment by a neighbor, or evidence of industrial, mining or agricultural operations not accounted for by the title insurance commitment or binder.
  - c. The physical inspection upon which the Certificate is based should occur immediately prior to the closing (see subsection II.K.). The individual who inspects the subject real property executes the Certificate. The only approved forms for a Certificate of Inspection and Possession are set forth in DOJ's Title Standards 2001, subsection 10.b., which is available over the Internet at [http://www.usdoj.gov/enrd/title.htm#chap\\_10](http://www.usdoj.gov/enrd/title.htm#chap_10).
  - d. Those unrecorded rights, claims, or encumbrances, that are found to exist but are determined not to impair the future marketability of the property's title or not to interfere with the Coast Guard's planned or intended use of the property shall be identified and described in an attachment to the Certificate of Inspection and Possession.
6. Corporate Documentation-Conveyance by Corporation. The following documents will be required if the owner is a corporation:

- a. Proof of validity of corporate existence;
  - b. Proof of the corporation's power to hold and convey real property;
  - c. Certificate of good corporate standing with the state in which the subject real property is located; and
  - d. A certified copy of the resolution authorizing the conveyance to the United States, enacted in compliance with any pertinent state statutory requirements.
7. Documentation-Conveyance by Non-Federal Public Sector Entity (State, Municipal or County Government). The following documents will be required if the owner is a non-Federal public sector entity:
  - a. Resolution authorizing sale and sufficient portion of charter, resolutions or other source of authority of such public sector entity to hold and convey real property; and
  - b. Evidence of compliance with all state statutory requirements necessary to transfer valid title.
8. Deed. The deed is the legal document that transfers title, or the fee simple, between parties. Upon the deed's execution and delivery to the purchaser, the seller's ownership over the property terminates, and the purchaser's ownership begins. Although there are different types of deeds, the United States only acquires real property (fee simple interest) through use of a general warranty deed. Under a general warranty deed, the seller warrants, or guarantees, that he or she holds clear title to the property. The servicing legal staff shall prepare the general warranty deed upon receipt of the preliminary title assembly. The servicing legal staff shall ensure that the deed meets the Department of Justice (DOJ) requirements set forth in section 8 of the Title Standards 2001 (this document is available over the Internet at <http://www.usdoj.gov/enrd/title.htm>). In unusually complex or novel cases, the servicing legal staff shall consult with Commandant (G-LGL). Enclosure (7) to this chapter is a sample general warranty deed.
9. Deed—Legal Description. The servicing legal staff shall ensure that the deed accurately describes the real property being acquired. Typically, the real property is described in terms of metes and bounds, with reference to a fixed and recorded monument or control point. In the case of real property that is officially platted, a description in terms of lot and block number is adequate, provided that the lot and block description has been officially recorded and can be found in a current certified copy of an official plat.
10. POOT Rendered. Upon receipt of the preliminary title assembly, the servicing legal staff shall begin preparation of the POOT. Authority to execute prepared POOTs has been delegated to MLCLANT (I) and MLCPAC (I). Upon signature by MLCLANT (I) or MLCPAC (I), as appropriate, the POOT will be sent to the servicing real property staff to satisfy all requirements or objections identified by the POOT. Once the requirements and objections set forth in the POOT have been satisfied and the Commander MLC has executed the standard option agreement, the Coast Guard may proceed with closing (see

subsection II.K.).

11. POOT Rendered by DOJ. DOJ shall render the POOT for acquisitions of real property subject to a reversionary clause (see subsection III.A.). In such cases, the servicing legal staff shall forward the preliminary title assembly to Commandant (G-LGL). Commandant (G-LGL) will coordinate with DOJ.
12. Legal Questions. In addressing legal questions arising from title issues, the servicing legal staff should refer to the applicable DOJ standards, regulations and guidance, including:
  - a. Title Standards 2001 (this document is available over the Internet at <http://www.usdoj.gov/enrd/title.htm>);
  - b. A Procedural Guide for the Acquisition of Real Property by Governmental Agencies, 1972 (Procedural Guide) (at present, this document is not available over the Internet—Commandant (G-LGL) will provide copies to servicing legal and real property staffs upon request); and
  - c. Regulations of the Attorney General Promulgated In Accordance With the Provisions of Public Law 91-393 Approved September 1, 1970, 84 Stat. 835, an Act to Amend Section 355 of the Revised Statutes, As Amended [40 U.S.C. § 255] Concerning Approval by the Attorney General of the Title to Lands Acquired For And On Behalf of the United States And For Other Purposes (Attorney General Regulations) (these regulations have *not* been codified into the Code of Federal Regulations nor is the document presently available over the Internet—Commandant (G-LGL) will provide copies to servicing legal and real property staffs upon request);

#### **K. Closing of the Real Property Acquisition**

1. General. The “closing” occurs when the owner of the subject real property transfers title to the United States, by execution and delivery of the general warranty deed. If the United States is acquiring the property by purchase, the payment of funds to the owner occurs at this time.
2. Designation of the Closing Attorney. A member of the servicing legal staff shall serve as closing attorney. Commandant (G-L) must approve of any exception.
3. Duties of the Closing Attorney Prior to Closing. Closing attorneys should consult the applicable DOJ regulations, procedures and guidance (see paragraph II.J.12). For particularly complex or difficult transactions, the closing attorney shall also consult with Commandant (G-LGL). Prior to the closing, and after execution of the option agreement by the Commander, MLC, the closing attorney shall:
  - a. Review the file relating to the acquisition;

- b. Ascertain whether there are any conditions to be performed or requirements to be met on the part of the owner or the Coast Guard, and what objections to the title are to be eliminated in accordance with the POOT, the DOJ Title Standards 2001, the Procedural Guide, and the Attorney General Regulations (see paragraph II.J.12.);
  - c. Determine the outstanding interests in liens and claims against the property, which are to be satisfied out of the purchase price, what curative action must be taken and what curative data must be obtained to cure all specified defects in the title (Schedule B of the title insurance policy, issued after the closing, shall contain only those defects or encumbrances which have been expressly waived in the Certificate of Non-Interference);
  - d. Ensure that the general warranty deed has been prepared in accordance with the laws of the state in which the subject real property is situated, and that all state legal requirements pertaining to the execution and delivery of deeds will be met prior to or at closing;
  - e. Ensure that the corporate documentation, if any, meets the requirements of the applicable state law;
  - f. Ensure that all interested parties are notified, in writing, of the date and place the transaction will be closed;
  - g. Prepare a closing statement (see DOJ Procedural Guide at 18-19) covering all charges to be deducted from the purchase price check, including all taxes and assessments constituting liens against the property, outstanding judgments, mortgages or deeds of trust, and all other liens, statutory or otherwise;
  - h. Immediately prior to closing, inspect or arrange to have inspected the subject real property in order to ascertain the existence of, and if necessary to obtain the release or discharge of, any unrecorded rights, claims, or mechanic's liens in accordance with the DOJ Title Standards 2001 (the result of this inspection shall be evidenced by the execution of the Certificate of Inspection and Possession—see paragraph II.J.5.); and
  - i. Immediately prior to closing, seek assurance from the title insurance company that a review of the title records subsequent to the effective date of the title insurance commitment or binder discloses that no adverse changes have occurred (if any changes have occurred, the closing attorney shall be furnished with sufficient data to enable him or her to clear the record of such adverse changes).
4. Discharge of Encumbrances. Prior to or at closing, all mortgages, deeds of trust, judgments, mechanic's liens, restrictive covenants, easements, claims and other encumbrances identified in the POOT, or discovered by the title insurance company subsequent to the issuance of the POOT or by the physical inspection of the subject real property, must be satisfied, released, waived or discharged of record. Fees for recording releases, discharges, satisfactions and other curative material must be paid by the owner. Only those encumbrances that will not adversely affect the future marketability of the

property or interfere with the Coast Guard's planned or intended use of the property are exempt from this satisfaction, release, waiver or discharge requirement. Such encumbrances are listed on the Certificate of Non-Interference or upon an attachment to the Certificate of Inspection and Possession (see subparagraph II.J.5.d.).

5. Payment of Taxes and Assessments. All taxes and assessments which are a lien on the property as of the date of the recordation of the deed to the United States must be paid by the vendor at or before the closing; tax receipts must be obtained. If the closing takes place after taxes or other assessments become a lien but before they are payable or assessed, adequate provision must be made to ensure payment (see paragraph II.K.6, "Inchoate Tax Liens," below). Proof must be submitted in the final title assembly that all taxes and assessments of record have been satisfied as of the closing date.
6. Inchoate Tax Liens. Depending upon the local jurisdiction, tax liens may attach to real property on a set date ("tax day"), but before the local taxing authority assesses or determines the amount of the tax or before the tax is due and payable. Such tax liens are inchoate tax liens. Inchoate tax liens can arise in Coast Guard real property acquisitions when the owner is not a tax-exempt entity. The title insurance company may not identify such inchoate tax liens if the title insurance commitment or binder lists only those taxes that are due and payable. Thus, if the closing attorney only ensures payment of taxes that are due and payable, the inchoate tax lien will remain after closing (after closing, no more tax liens will attach because the property has passed into Federal tax-exempt status). In such circumstances, the amount of tax will eventually become assessed, and due and payable, although the lien will be unenforceable against the United States. Nevertheless, the now choate tax lien, along with possible penalty charges added each tax year, will continue to encumber the subject real property and will be enforceable against future owners who do not have tax-exempt status. Therefore, the future marketability of the property will be impaired. Thus, the closing attorney should ensure the satisfaction and elimination of all tax liens, regardless of whether the amount of the tax has been assessed and regardless of whether the tax is due and payable. The closing attorney should consult the DOJ Procedural Guide at page 19 for guidance. If further guidance is required, the closing attorney should consult with Commandant (G-LGL).
7. Execution of Deed to the United States. When all requirements and objections noted in the POOT have been satisfied, and any subsequently discovered adverse claim has been disposed of, the general warranty deed conveying title to the United States should be executed by the owners and delivered to the closing attorney in accordance with the applicable state laws.
8. Documentary and Other Tax Stamps. Prior to the recordation of the deed to the United States, all necessary documentary, revenue or other required tax stamps should be affixed to the deed, the cost of which is to be paid by the Coast Guard.
9. Delivery of Treasurer's Check to the Owner. The check for the purchase price or balance shall be paid to the owner after:

- a. All requirements set forth in the POOT have been met or satisfied;
  - b. The option has been exercised by Commander, MLC;
  - c. All instruments satisfying, releasing, waiving or discharging all liens or other encumbrances that may impair the future marketability of the subject real property or interfere with the Coast Guard's planned or intended use of the property have been executed and delivered to the closing attorney;
  - d. The deed to the United States, in recordable form, has been delivered to the closing attorney; and
  - e. The closing attorney has been advised by the title insurance company that it will issue a title insurance policy (in the form "ALTA U.S. Policy – 9/28/91") showing title to the property vested in the United States of America, subject only to those encumbrances that the servicing real property staff has determined will not impair the future marketability of the property or interfere with the Coast Guard's planned or intended use of the property (*i.e.*, only those encumbrances listed on the Certificate of Non-Interference or otherwise attached to the Certificate of Inspection and Possession).
10. Recordation of Deed. Immediately after closing, the closing attorney should record the deed conveying title to the United States and all other documents pertaining to title (*e.g.*, instruments satisfying, releasing, waiving or discharging liens or encumbrances) with the local authority that registers deeds and other real property documents (typically, an office of the municipality or county where the property is located). Recordation fees for the deed are paid by the Coast Guard; recordation fees for instruments satisfying, releasing, waiving or discharging liens or encumbrances are paid by the owner (see DOJ Procedural Guide at 20).
11. Notification of Taxing Authority. After closing, the closing attorney shall send a letter to the local taxing authority giving notification that title to the property has vested in the United States, that the local taxing authority should list the property as tax exempt upon its tax rolls, and that no further taxes should be levied upon the property. The closing attorney should note that sending the above letter, of and by itself, does not eliminate any inchoate tax liens. Provision for the satisfaction and elimination of any inchoate tax liens should be made before or at closing (see paragraph II.K.6., "Inchoate Tax Liens").
12. USCG Finance Center (FINCEN) Notification/Civil Engineering Database (CEDS). Upon recordation of the deed and any other instruments pertaining to title, the closing attorney shall forward copies of the deed, any other pertinent title instruments, the title insurance policy, the Certificate of Non-Interference, the Certificate of Inspection and Possession, the local taxing authority letter, and any other pertinent documents, to the servicing real property staff for inclusion within the requisite real property file. The servicing real property staff shall notify the FINCEN of the acquisition and make the appropriate entry into CEDS.

## **L. Final Opinion of Title**

1. **General.** The purpose of the final opinion of title (FOOT) is to document that title to the property has properly vested in the United States of America. The FOOT is prepared by the servicing legal staff and executed by MLC(l). The execution of the FOOT is the final step in the acquisition of real property from a non-Federal party.
2. **FOOT Requirements.** Upon receipt of the title insurance policy, the closing attorney or other member of the servicing legal staff shall determine whether the policy is satisfactory (*i.e.*, all objectionable exceptions identified in, or subsequent to, the POOT have been removed from Schedule B). If the documents are found to be satisfactory, the closing attorney or other member of the servicing legal staff shall prepare the FOOT. If not satisfactory, the servicing legal staff shall attempt to resolve the matter (Commandant (G-LGL) is available for consultation as appropriate). A FOOT shall:
  - a. Identify the property acquired (reference legal description, municipality, county and state, and acreage);
  - b. State the purpose for which the Coast Guard acquired the property;
  - c. State the consideration paid, if any, for the property;
  - d. Identify the vendor of the property;
  - e. State that a general warranty deed conveying the property's title to the United States of America from the vendor has been recorded in the local authority's land records office or deed registry (the registry's book and page numbers should be identified);
  - f. State that title to the property has properly vested in the United States of America;
  - g. State that a title insurance company, approved by DOJ, has issued a title insurance policy in the form "ALTA U.S. Policy – 9/28/91;"
  - h. State that the title insurance policy identifies the United States of America as the insured;
  - i. State that all encumbrances upon the property that were identified in the POOT as adversely affecting the future marketability of the property or as interfering with the Coast Guard's planned or intended use of the property have been satisfied, released, waived or discharged; and
  - j. List those encumbrances that the servicing real property staff has determined will not adversely affect the future marketability of the property or interfere with the Coast Guard's planned or intended use of the property.
3. **FOOT Enclosures.** Copies of the following documents shall be attached as enclosures to the FOOT:

- a. The executed option agreement;
  - b. The title insurance policy;
  - c. The executed Certificate of Non-Interference;
  - d. The executed Certificate of Inspection and Possession;
  - e. The executed and recorded general warranty deed (bearing the clerk's stamps and recording office's deed book and page numbers);
  - f. The map or plat of the parcel;
  - g. The corporate documentation, if appropriate;
  - h. The closing statement;
  - i. The receipt for United States Treasurer's check;
  - j. The letter to the local taxing authority (see paragraph II.K.11.); and
  - k. Any miscellaneous documents (*i.e.*, affidavits, disclaimers, certified copies or pertinent portions of articles of incorporation, resolutions authorizing sale, etc.).
4. Execution of FOOT. Upon preparation of the FOOT, the FOOT will be submitted to MLC(l) for signature. Upon execution of the FOOT, the servicing legal staff shall forward the FOOT to the servicing real property staff for inclusion within the property file. The servicing legal staff shall also forward copies of the following to Commandant (G-LGL) (for DOJ review purposes):
- a. The FOOT;
  - b. The title insurance policy;
  - c. The executed and recorded general warranty deed (bearing the clerk's stamps and recording office's deed book and page numbers); and
  - d. The executed Certificate of Inspection and Possession.
5. FOOT Rendered by DOJ. DOJ shall render the FOOT for acquisitions of real property subject to a reversionary clause. In such cases, the servicing legal staff shall forward the documents listed in paragraph II.L.3. to Commandant (G-LGL). Commandant (G-LGL) will then coordinate the preparation of the FOOT with DOJ. Upon execution of the FOOT by DOJ, Commandant (G-LGL) shall forward the FOOT to the servicing real property staff for inclusion within the property file.



### III. SPECIAL MATTERS

#### A. Acquisition of Real Property Subject to a Reversionary Interest

1. General. Per the Attorney General Regulations (see subparagraph II.J.12.c.), a fee simple acquisition of real property subject to a reversionary interest (also known as a defeasible fee) is generally prohibited.
2. Exceptions. A fee simple acquisition subject to a reversionary clause may be permissible in the following situations:
  - a. The Coast Guard plans to construct or erect permanent improvements or temporary improvements of substantial value upon the subject real property, and the servicing legal staff determines that there is applicable statutory authority which **clearly authorizes** the acquisition of a defeasible fee (see Attorney General Regulations at ¶ 5(b));
  - b. The subject real property will be donated to the United States for the purpose of erecting certain specified permanent improvements, and the real property will revert if construction of the specified permanent improvements is not commenced by a certain date, and the right of reverter will terminate upon the expenditure of funds appropriated for such construction (see Attorney General Regulations at ¶ 5(e)); or
  - c. The Coast Guard will not erect permanent improvements upon the subject real property (see Attorney General Regulations at ¶ 5(f)).
3. Attorney General Approval Required. If the Coast Guard acquisition of a defeasible fee meets the criteria of at least one of the above exceptions, the real property may be acquired, subject to approval by the Attorney General of the United States. The Attorney General will issue both the POOT and the FOOT (see paragraphs II.J.11 and II.L.5.).
4. Acquisition Procedures. In all other respects, the acquisition of a defeasible fee should be carried out in accordance with section II of this chapter.

#### B. Acquisition of Easement Interests

1. General. An easement is a non-possessory interest in another's real property, and as such is a lesser interest than a fee simple (see Glossary). Thus, when acquiring an easement, title to the subject real property will remain with the non-Federal fee simple owner. The easement holder has the right to use the subject real property for a specific, limited purpose. Typical examples of easements include right-of-way or access easements, and utility line easements. Generally, the easement holder does not have the legal right to exclude the fee simple owner or third parties from the area covered by the easement (of course, the United States has the legal right to prevent the owner or third party from interfering with the use permitted by the easement). The procedures and requirements for acquiring easements are the same as a fee simple acquisition (section II of this chapter), except as described in this subsection III.B.

2. Fee Simple vs. Easement Acquisition. In those circumstances in which the Coast Guard will need the exclusive possession or control of, or will require the exclusive jurisdiction of the United States over, the area covered by the proposed easement, it will be necessary to acquire either a fee simple or a leasehold interest.
3. Easements—Planning Proposal Exemption. Easement acquisitions are exempt from the planning proposal requirement if the following criteria are met:
  - a. The estimated value of the easement is \$100,000 or below; and
  - b. The easement is being acquired to support ongoing base operation and maintenance projects that are funded with Operating Expenses (OE/AFC-43) funds.
4. Easements—Other Requirements. Except as provided for in this subsection III.B., easement acquisitions that are exempt from the planning proposal requirement must still meet all other requirements of section II of this Chapter, including the satisfaction of NEPA and all other environmental requirements. Commandant (G-SEC) shall be the approving authority for such easement acquisitions.
5. OST Notification Requirements and Approval. Neither preparation of the OST Real Property Pre-Acquisition Notification form (paragraph II.B.3.) nor the GSA pre-acquisition notification (paragraph II.B.4.) is required for easement acquisitions. OST approval is required only if the easement acquisition meets or exceeds OST threshold requirements (see paragraph II.B.10.).
6. Appraisal Requirements. See paragraph II.G.8.
7. Permanent Interest; Assignment of Easement. In general, the Coast Guard should only acquire easement interests that are of a permanent nature and that have no restrictions on the ability of the United States to assign or convey the easement interest to a non-Federal party (or to transfer the administrative control of the easement from one Federal agency to another). In those circumstances in which the acquisition of a temporary easement or an easement with assignment or conveyance restrictions is desirable, the servicing legal staff shall consult with Commandant (G-LGL) before any commitment to acquire the easement is made.
8. Encumbrances. In circumstances in which an easement interest is being acquired, as opposed to a fee simple interest, the scope of encumbrances that may interfere with the Coast Guard's planned or intended use of the easement interest may be significantly reduced as only a non-possessory interest is being acquired. Encumbrances held by third parties, such as other easements, and restrictive covenants encumbering the underlying parcel of land, that do not interfere with the Coast Guard's planned or intended use of the easement being acquired or that will not impair the future marketability of such easement, do not have to be satisfied, discharged, released, waived, or extinguished. The servicing real property staff shall consult with the servicing legal staff, as appropriate, in order to determine whether any encumbrance interferes with the Coast Guard's planned or intended use of the easement interest, or impairs the future marketability of the easement

interest. With respect to the treatment of tax liens encumbering the underlying parcel of land, see subparagraph III.B.8.a. below.

- a. Satisfaction of Tax Liens Encumbering Underlying Land. In accordance with the applicable regulations of the Attorney General (see subparagraph II.J.12.c.), if the purchase price of the easement is more than 50% of the reasonable value of the underlying parcel of land (the owner's entire contiguous property), then funds must be withheld from the purchase price to satisfy any tax liens upon the property, including those not yet due and payable. The servicing legal staff shall consult with Commandant (G-LGL) as appropriate.
9. Grant of Easement. The grant of an easement interest must be in writing and signed by the fee simple owner. The document granting the easement is a form of a deed and is prepared by the servicing legal staff.
10. Recordation of Easement Interest. The closing attorney shall record the deed granting the easement in the local authority's land records office or deed registry.
11. Navigational Servitude. The Coast Guard may construct or erect aids to navigation or other improvements (*e.g.*, bulkheads, piers, etc.) upon submerged lands covered by the navigable waters of the United States through the exercise of the United States' navigational servitude. The exercise of the navigational servitude creates an interest in the submerged land that is tantamount to an easement. The exercise of the navigational servitude upon submerged lands is not considered a taking and the owner is not entitled to any compensation. The exercise of the navigational servitude upon state owned submerged lands is covered by the Submerged Lands Act, 43 U.S.C. §§ 1313(c) and 1314.
  - a. Subsections II.E.-II.L. do not apply to the exercise of the navigational servitude upon submerged lands covered by the navigable waters of the United States. Subsections II.E.-II.L. do apply, however, to that portion of a project that involves the acquisition of a real property interest upon any associated upland.
  - b. The owner of the submerged land in question shall be notified, in writing, at least sixty calendar days prior to the exercise of the navigational servitude. If the owner objects to the exercise of the navigational servitude, the servicing legal staff shall consult with Commandant (G-LGL).

### **C. Exchange of Real Property**

1. General. The process to exchange real property with a non-Federal party involves both an acquisition and a disposal action. In an exchange transaction, the United States acquires real property of equal or greater value than the real property conveyed by it in the exchange. The value of the respective properties is determined by appraisal.
2. Nature of Exchange. The real property interests exchanged must be the same. Thus, a fee simple must be exchanged only for another fee simple and an easement interest must

be exchanged only for another easement interest.

3. **Leasehold Exchanges.** Leasehold exchanges are complicated matters in that they raise various appropriation law and environmental liability matters. As such, they are discouraged. For any proposed leasehold exchange, the servicing real property and legal staffs must consult with Commandant (G-SEC) and (G-LGL) respectively, before any commitment is made to the non-Federal party.
4. **Authority.** The authority for an exchange transaction is 14 U.S.C. § 92(g).
5. **Restrictions.** The statutory authority restricts exchange transactions to real property for real property exchanges, not real property for money or services. In addition, the statutory authority prohibits the acquisition of real property that is of less value than the real property conveyed by the United States in the exchange. If the appraised value of the real property to be acquired is greater than that of the real property to be conveyed, then the Coast Guard may expend appropriated funds to satisfy the balance or the non-Federal party can donate the balance (see subsection III.D.). The following illustrates the above:
  - a. **Appraised values of the respective properties are equal:** an exchange of real property for real property, no cash payment by the Coast Guard or donation by the non-Federal party;
  - b. **Appraised value of the non-Federal party's real property is greater:**
    - (1) The Coast Guard may trade the real property under its control, plus cash to satisfy the balance, in return for the non-Federal party's real property; or
    - (2) The Coast Guard may trade the real property under its control in return for the non-Federal party's real property, the balance to be deemed donated to the United States by the non-Federal party as an unconditional gift (only Commandant (G-CFP) or higher authority can accept gifts of real property—the requirements and procedures set forth in COMDTINST M7100.3A, Ch. 5, Sect. W shall be followed); or
  - c. **Appraised value of the real property under the Coast Guard's control is greater:** transaction prohibited.
6. **Process.** The procedures and requirements for acquiring property from a non-Federal party in an exchange transaction are the same as a fee simple acquisition (section II of this chapter), except for the following:
  - a. In addition to appraising the value of the non-Federal party's real property, the real property under the control of the Coast Guard must be appraised;
  - b. In lieu of an option agreement, an exchange agreement shall be used for the exchange transaction (a sample exchange agreement is attached as enclosure (8));

- c. In addition to preparing a legal instrument conveying the subject real property to the United States (*e.g.*, general warranty deed), a quitclaim deed must be prepared to convey the United States' real property interest to the non-Federal entity (although the United States cannot receive less than a general warranty deed or its legal equivalent, executed by the non-Federal party, it can only relinquish title to real property via a quitclaim deed).
7. Exchange Agreement. The servicing real property staff shall prepare, and the servicing legal staff shall review and approve, the exchange agreement. Both parties must execute the exchange agreement at or before the closing. The Commander, MLC or his or her delegatee shall execute the exchange agreement on behalf of the Coast Guard.
8. Quitclaim Deed. The servicing legal staff shall prepare the quitclaim deed conveying the real property owned by the United States to the non-Federal party. The quitclaim deed shall be executed by the closing attorney and delivered to the non-Federal party at closing (simultaneously with the execution and delivery of the general warranty deed by the non-Federal party).
9. Disposal. The portion of the exchange transaction involving the transfer of real property to the non-Federal party is tantamount to a disposal action. As such, the Coast Guard must meet all environmental requirements that arise when disposing of real property (see Chapter 3, section II and subsection IV.C.).
10. Public Domain Land. Public domain lands under the administrative control of the Coast Guard cannot be exchanged.
11. GSA Screening. As the exchange authority is separate and distinct from the Federal Property and Administrative Services Act of 1949, GSA approval or screening is not required for an exchange transaction.
12. McKinney Act. An exchange transaction carried out under the authority of 14 U.S.C. § 92(g) is exempt from the requirements of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. § 11411).

#### **D. Donation of Real Property**

1. Policy. The Coast Guard will only accept gifts of real property when the property will clearly satisfy operational requirements. The Coast Guard shall not actively solicit gifts of real property.
2. Authority. The primary authorities to accept gifts are 10 U.S.C. § 2601 and 14 U.S.C. § 92(f).
3. General Considerations. In general, the Coast Guard will follow the standard acquisition procedures (section II of this chapter) when acquiring real property by donation, except that preparation of an option agreement is not required.

4. G-CFP Acceptance. Only Commandant (G-CFP) or higher authority can accept gifts of real property. The servicing real property and legal staffs shall ensure compliance with the requirements and procedures set forth in the Financial Resource Management Manual, COMDTINST M7100.3(series), Ch. 5, Sect. W. The servicing legal staff shall consult with Commandant (G-LGL) as appropriate.
5. Appraisal. In accordance with the Department of Transportation's regulations (49 C.F.R. §§ 24.102(c)(2) and 24.108), an appraisal is required unless the donor either releases the Coast Guard from this obligation, in writing, or the fair market value of the subject real property is estimated to be \$2,500.00 or less, based on a review of available data.

#### **E. Acquisition By Condemnation**

1. General. Condemnation is a judicial process by which the United States takes the real property of a non-Federal entity under the power of eminent domain. Either fee simple or easement interests can be condemned. The U.S. Attorney in whose district the subject real property is located initiates and conducts the condemnation proceeding for the United States. The owner of the subject real property is reimbursed for the taking. The court adjudicating the condemnation determines the amount of the reimbursement (the "just compensation").
2. Policy. An interest in real property should be obtained through negotiation based on the fair market value of property that is established by an approved appraisal. Condemnation proceedings may be used only if negotiations fail or if the legal title to the subject real property is defective (*e.g.*, the true owner of the real property cannot be determined from the local land records).
3. Authority. The basic authority to acquire real property by condemnation is 40 U.S.C. § 257. The method by which the Coast Guard normally seeks condemnation is a Declaration of Taking, which is authorized under 40 U.S.C. § 258a. Section 258a provides that upon the filing of a Declaration of Taking and the deposit into the court of the amount of the estimated just compensation for the subject real property, title to such real property shall vest in the United States of America.
4. Examples of When Condemnation May Be Necessary. Circumstances that may require acquisition through condemnation are the following:
  - a. An examination of the title evidence discloses title defects that are too numerous or complex for curative action or title defects that can only be cured through court proceedings;
  - b. There is inability to reach a mutually satisfactory agreement for the purchase of the property or inability to locate the proper parties for negotiations;
  - c. The owner refuses to comply with the terms and conditions of an option agreement; and

- d. The owner requests that the subject real property be acquired through condemnation (this situation may arise when the owner is a non-Federal public entity that lacks legal authority to sell or otherwise dispose of real property).
5. Condemnation Assembly. If the servicing real property staff determines that a requirement for real property cannot be satisfied except through condemnation, the staff shall prepare a condemnation assembly. The servicing real property staff shall consult with the servicing legal staff as appropriate. A condemnation assembly shall consist, at a minimum, of the following:
  - a. A legal description of the subject real property (*e.g.*, metes and bounds description, plat and lot number);
  - b. A statement of the purpose for which the real property is being acquired;
  - c. A statement of why condemnation is necessary;
  - d. A statement identifying and describing any encumbrances, if any, that will be condemned, such as rights or easements held by third parties;
  - e. A statement of any encumbrances, or rights retained by the owner, that will not interfere with the Coast Guard's planned or intended use of the property nor adversely affect the real property's future marketability (essentially, the same encumbrances that would be listed in the Certificate of Non-Interference, see paragraph II.J.4.);
  - f. Reports of the Coast Guard representative showing time and place of negotiations, and the amounts of any and all offers and counter-offers;
  - g. All appraisal reports concerning the subject real property;
  - h. Any title evidence, including any commitments or binders issued by a title insurance company; and
  - i. Any additional information or documentation that will assist the U.S. Attorney's office in litigating the condemnation action.
6. Commandant/Department of Justice (DOJ) Approval. After review by the servicing legal staff, the real property staff shall forward the condemnation assembly to Commandant (G-SEC). Commandant (G-SEC), in consultation with Commandant (G-LCL) and (G-LGL), will approve or reject the condemnation action. The minimum basis for approval is that the subject real property must be acquired to meet an operational need. If approved, Commandant (G-LCL) will seek any necessary approvals from DOT and DOJ. If approved, Commandant (G-LCL) shall then contact the requisite U.S. Attorney's Office to begin the condemnation process.
7. Litigation. The United States Attorney's Office in whose district the subject real property is located shall be responsible for conducting the condemnation litigation on behalf of the

United States. The condemnation action shall be filed in the United States District Court that has jurisdiction over the subject real property. The court will not review the site selection process, but will only adjudicate the amount of just compensation.

8. Relocation Assistance. The servicing legal staff shall ensure that the Coast Guard complies with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601 *et seq.*, and its implementing regulations, 49 C.F.R. Part 24 (see paragraph II.H.3.).
9. Recordation and Filing. The U.S. Attorney's office is responsible for properly filing all legal documents required in a condemnation action, including the court order taking the property for the United States, among the land records of the jurisdiction in which the land is located. Commandant (G-SEC) will forward a copy of the recorded court order, and any other pertinent documentation, to the servicing real property staff. The staff shall ensure that the documentation is entered into the Coast Guard's real property records and the civil engineering database (CEDS).

#### **F. General Services Administration (GSA) Relocation Authority**

1. General. The GSA relocation authority, which is exercised at GSA's discretion, offers Federal agencies funding to relocate from antiquated, functionally obsolete, or underutilized properties to properties better suited for that agency's needs. GSA and the Office of Management and Budget (OMB) must approve both the relocation proposal and the amount of funding. If approved, GSA will fund or reimburse the relocation expenses, and then sell the vacated property. **GSA will normally only consider a project for the relocation authority program if the estimated proceeds from the sale of the vacated property are at least twice the amount of the estimated relocation costs.**
2. Relocation Expenses Covered. GSA will pay for the following expenses:
  - costs to buy, build, or lease;
  - moving costs;
  - new equipment, tools, furniture;
  - administrative expenses;
  - travel;
  - site investigation;
  - appraisals; and
  - engineering.
3. Procedures. If candidate properties (both to be acquired and vacated) are available, the unit concerned (through the servicing shore facility planning staff) shall document the relocation proposal through the planning proposal process in accordance with subsections II.B.-C. If approved by Commandant (G-CRC), Commandant (G-SEC) will seek approval from GSA and OMB (via GSA). If GSA and OMB approve the relocation proposal, then Commandant (G-SEC) will provide further direction to the appropriate staffs.



**DEPARTMENT OF TRANSPORTATION  
OFFICE OF ADMINISTRATIVE SERVICES & PROPERTY MANAGEMENT  
REAL PROPERTY PRE-ACQUISITION NOTIFICATION**

- A. Basis of Submittal.** During the initial planning stages of the acquisition process, before any site selection studies are started, the Office of the Secretary of Transportation (OST) shall be notified of all planned acquisitions not meeting the exceptions described below. OST will review each proposed acquisition to ensure that there is no known existing real property in the OST property inventory that could fulfill the requirement. An OST Pre-Acquisition Notification shall be prepared in executive summary form and submitted to Commandant (G-SEC-1). Commandant (G- SEC-1) will provide written confirmation within three weeks of the receipt of the notification on whether any alternative existing properties are available. If OST reports that there are properties available they shall be considered in addition to other candidate properties, in site selection studies, and documented in the Planning Proposal.
- B. Report Requirements.**
1. Clearly describe the intended use of the proposed property.
  2. Describe in as much detail as possible the defining attributes of the desired property. Indicate which are required attributes, and which are desired attributes.
    - a. Describe any geographic constraints involved. Specify the general geographic area in which the property must be located. Be as specific as necessary, indicating state, city, and local jurisdiction as may be appropriate.
    - b. Describe any other geographic constraints if they exist. For instance, maximum distance and/or travel time from existing facilities, etc.
    - c. Define the approximate size of the property desired.
    - d. Describe any access requirements that the desired property must have. Does the site require waterfront access? If yes, what special waterfront access requirements are necessary? Does the site require special highway or rail access? Must the property be located adjacent to, or have immediate access to, air transportation?
    - e. Describe any special utility requirements that the desired site must have.
    - f. Describe any buildings and/or other improvements that may be required on the site.
    - g. Briefly describe any capital improvements planned for the site.
    - h. Briefly describe any environmental impacts that the proposed facility might have on neighboring properties.

3. Indicate the types of acquisition that are being considered (fee simple, easement, lease, permit, etc.), and the proposed schedule for acquisition.

C. **Exceptions.** This report is not required for no cost property transfers, for purchase or lease of property intended for use by recruiting offices or navigational aids, or for housing leases that are in support of operational units.

**ORDER**  
DOT 4300.2

**Department of Transportation**  
**Office of the Secretary**  
**Washington, D.C.**

1 -19-77

**SUBJECT: REAL PROPERTY ACQUISITIONS AND DISPOSAL**

1. PURPOSE. This Order provides overall guidance and procedural requirements for obtaining approval by the Office of the Secretary (OST) in advance of any action leading to the acquisition or disposal of real property meeting the criteria prescribed herein.
2. CANCELLATION. DOT N 4300.2, NOTIFICATION OF IMPENDING REAL PROPERTY ACQUISITION AND DISPOSAL ACTION, of 10-23-74.
3. REFERENCES.
  - a. DOT 1100.34A, Facility Acquisition, Expansion or Relocation, of 1-8-70, which provides for administrative review of site evaluation for new facilities and for the expansion or relocation of existing facilities.
  - b. DOT 1100.17A, Changes to Facilities, of 3-7-68, which requires advance notification to the Secretary prior to release of official information or publicity on significant actions involving facilities of the Department of Transportation.
  - c. DOT 4600.3A, Utilization, Disposition, and Acquisition of Federal Real Property, of 4-5-74, which sets forth Department of Transportation (DOT) policy governing real property management and implements the provisions of the General Services Administration (GSA) Federal Property Management Circular (FMC) 73-5, of December 17, 1973, on the "Utilization, Disposition, and Acquisition of Federal Real Property."
  - d. DOT 1100.10, Co-Location of Department of Transportation Facilities, of 7-18-67, which states DOT policy relative to co-location of facilities.
4. BACKGROUND. The President and the Congress continue to express their intense interest in promoting the most effective use of real property held by Federal agencies. Executive Order 11512, of 2-21-70, and Executive Order 11724, of 6-25-73, and subsequent Presidential and Office of Management and Budget directives stress the importance of effective and economic use of real property and of prompt disposition of unneeded or underutilized property. This high level interest in real property utilization programs makes it essential that OST be cognizant of and participate in the more significant Departmental real property transactions.

5. DEFINITIONS. As used in this Order the following terms have the meanings indicated:

- a. Real Property means any land, existing permanent improvement to land, or any interest therein.
- b. Interest means any right of ownership, use, or control of real property and includes fee title, leasehold, permit, license, easement, or other similar relationships.
- c. Acquisition means obtaining an interest in real property by means of purchase, acceptance of donation, lease, permit, license, assignment, reassignment, transfer, use agreement or other means.
- d. Disposal means relinquishing an interest in real property by sale, donation, outlease, permit, license, assignment, transfer, use agreement, or other means.

6. PROCEDURES.

- a. General. Real property covered by this Order shall be that property which meets any of the following criteria and is being considered for DOT acquisition or disposal. It does not cover real property to be acquired or disposed of in connection with grant or grant-in-aid programs (including Federal-Aid Highway projects within the meaning of 23 U.S.C. 107, Acquisitions of Rights-of-Way-Interstate System), or renewals or options to renew existing leases or permits.
  - (1) Unimproved land which has an estimated fair market value of \$100,000 or more;
  - (2) Land and existing improvements which together have an estimated fair market value of \$200,000 or more, or where the land portion of the property has an estimated fair market value of \$100,000 or more;
  - (3) Leases or permits, licenses, easements or use agreements for real property which have an actual or estimated annual rental rate or payment of \$50,000 or more;
  - (4) Real property, which provides for working or living accommodations for 25 or more employees, including active duty military personnel assigned to the Department;
  - (5) Real Property at a location in which OST has expressed interest, or the acquisition or disposal of which is known to have public or Congressional interest, or which will significantly affect the environment; and
  - (6) Real property for which the acquisition, utilization, or disposal has international implications.

- b. Acquisition. Prior to any action to commit the Government to acquire an interest in real property covered by this Order, the acquiring DOT element will advise the Assistant Secretary for Administration (with an information copy to the OST Director of Installations and Logistics, TAD-60) and request approval of the proposed acquisition. A memorandum should be forwarded as early as feasible after the specific real property has been identified and will include, as appropriate, the following information:
- 1) Identification of the property (e.g., location, description, ownership status, etc.).
  - 2) Method or type of acquisition (e.g., fee purchase, transfer, lease, condemnation, permit, etc.);
  - 3) Cost elements of the acquisition.
  - 4) Statement of proposed use, including identification of existing or planned programs for which the property is to be acquired, and budgetary plans for development of the property.
  - 5) Impact of the acquisition on DOT programs and other facilities, and the effect on DOT programs of failure to acquire the property.
  - 6) Details concerning the assignment of personnel to the activity for which the property is to be acquired.
  - 7) Impact of the proposed use of the property on the community such as:
    - (a) Displacement of current occupants;
    - (b) Influx of new residents;
    - (c) Housing, education and public transportation requirements and capabilities;
    - (d) Utility requirements;
    - (e) Relocation assistance requirements;
    - (f) Need for Environmental Impact Statement; and
    - (g) Other community impact.
  - 8) Other pertinent factors which should be considered in a decision to approve or disapprove the acquisition.
- c. Budget submittals. For real property acquisition requests which are submitted by means of the Departmental budget process, the information required by paragraph 6b will be furnished, as appropriate, as a supplement to the data submitted for all real property acquisition items specified or identified in the budget request, regardless of whether the property meets the criteria listed in paragraph 6a. Departmental approval of the

budgetary request and subsequent Congressional appropriations for such items constitute the approval required under this Order.

- d. Disposal. Prior to the initiation of any action to dispose of an interest in real property covered by this Order, the controlling DOT element will advise the Assistant Secretary for Administration (with an information copy to the OST Director of Installations and Logistics, TAD-60) and request approval for the disposal. A memorandum outlining the proposed disposal should be forwarded as early as feasible after the proposed disposal has been identified and will include, as appropriate, the following information:
  - (1) Identification of the property;
  - (2) Method of disposal;
  - (3) Cost elements of the disposal action;
  - (4) Effect on personnel presently assigned to the activity located on the property;
  - (5) Impact of the disposal on the community;
  - (6) Environmental impact;
  - (7) Any known interest in the property; and
  - (8) Other pertinent factors.
- e. Real Property acquisitions subject to the review procedures for site evaluation and approved under the provisions of DOT 1100.34A are exempt from this Order.

**FOR THE SECRETARY OF TRANSPORTATION**

**John W.Barnum**  
**DeputySecretary**



U.S. Department of  
Transportation

400 Seventh St., SW.  
Washington, D.C. 20590

Office of the Secretary  
of Transportation

**DEC 20 1993**

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**DOT REAL PROPERTY  
BULLETIN  
RP B 94-01**

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SUBJECT: Approval for Acquisition of Real Property

PURPOSE: This bulletin provides information to the Department of Transportation (DOT) secretarial offices and operating administrations on departmental policy concerning approval by the Office of the Secretary (OST) for the acquisition of real property. The bulletin amends DOT Order 4300.2, Real Property Acquisition and Disposal. It does not apply to General Services Administration (GSA) assigned space.

POLICY:

- a. Prior to the acquisition of real property that meets any of the following criteria, approval must be obtained from OST, Office of the Assistant Secretary of Administration:
  - Acquisitions that meet or exceed GSA's prospectus level (currently \$1.6 million net, adjusted annually);
  - Acquisitions that may involve congressional, OST, or public interest;
  - Acquisitions with international implications; and
  - Acquisitions that require long-term lease delegation authority from GSA.

Information required in DOT Order 4300.2, Section 6.b., Acquisition, is to be provided to OST if the proposed acquisition meets any of the above criteria for OST approval.
- b. For management oversight purposes, OST is to be provided an annual long-range plan of real property anticipated to be acquired during the next 5 years. OST will issue an annual data call.
- c. Prior to the acquisition of any real property, confirmation must be obtained from OST that there is no known existing Government controlled real property available. OST must be notified in the initial planning stages of the acquisition and prior to initiating site selection.
- d. OST is to be provided a quarterly report for all real property acquired during the past quarter.



e. The annual long-range plan, notification of real property acquisitions, and the quarterly report of real property acquired, shall include the following information:

- Geographic location;
- Use of property;
- Acreage and/or square feet;
- Type of space (e.g., office, storage, special);
- Acquisition date;
- Acquisition cost;
- Total personnel to be housed; and
- Type of acquisition (e.g., purchase, lease)

OST will provide specific formats for the above.

ACTION: This bulletin is effective immediately.

EXPIRATION DATE: This bulletin will remain in effect until canceled or until this information is included in a departmental order.

Ronald D. Keefer  
Director of Administrative Services  
and Property Management

## OPTION TO PURCHASE REAL PROPERTY—ENVIRONMENTAL WARRANTIES

[Recommended that the following provisions be incorporated into or attached to the standard option agreement (enclosure (5))].

The following provisions are hereby attached to and made a part of a certain Option To Purchase Real Property, entered into by and between \_\_\_\_\_, having a mailing address at \_\_\_\_\_, hereinafter called “Vendor,” and the United States of America, having a mailing address at \_\_\_\_\_, hereinafter called “United States,” through its duly authorized representatives, on the [date of option agreement], the purpose of which is to allow the United States an exclusive option to acquire certain real property, located in [city, county, state], further described in Exhibit [\_\_\_\_] of the aforesaid option, hereinafter referred to as the “Property:”

### **Section 1. Definitions**

For the purposes of these provisions, the following terms shall be defined as follows:

- (a) “Environment” shall mean soil, surface waters, groundwaters, drinking water supply, stream sediments, land surface or subsurface strata, ambient air, or any other environmental medium.
- (b) “Environmental Condition” shall mean any condition with respect to the Environment on or off the Property, whether or not yet discovered, which could or does result in any damage, loss, cost, expense, claim, judgment, demand, order, or liability to or against:
  - (1) The Vendor by any third party (including, without limitation, any Federal, state, or local government), including, without limitation, any condition resulting from the operation of Vendor’s business or the operation of the business of any other property owner or operator in the vicinity of the Property or any activity or operation formerly conducted by any person or entity on or off the Property, or
  - (2) The United States by any Federal agency or any third party including, without limitation, any state or local government.
- (c) “Environmental Law” shall mean any environmental or health and safety-related law, regulation, rule, ordinance, or bylaw, or any policy, directive, or instruction, at the Federal, state, or local level, whether existing as of the date hereof, previously enforced, or subsequently enacted.

- (d) "Hazardous Material" shall mean any substance considered to be a hazardous waste or hazardous substance, pollutant, toxic substance, or oil as defined in or pursuant to:
- (1) The Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §§ 6901 *et seq.*;
  - (2) The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. No. 99-499, 100 Stat. 1613 and the Community Environmental Response Facilitation Act, Pub. L. No. 102-426, 106 Stat. 2174 (1992);
  - (3) The Federal Water Pollution Control Act of 1972 (the "Clean Water Act"), as amended, 33 U.S.C. §§ 1251 *et seq.*; or
  - (4) Any other Federal, state, or local environmental law, regulation, ordinance, rule, or bylaw, or any policy, directive, or instruction, whether existing as of the date hereof, previously enforced, or subsequently enacted, including without limitation, any subsequent amendments to any of the laws listed in paragraphs (1)-(3) of this subsection.
- (e) "Permit" shall mean any environmental permit, license, approval, consent, or authorization issued by a Federal, state, or local government agency.
- (f) "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping into the Environment.
- (g) "Threat of Release" shall mean a substantial likelihood of a Release that requires action to prevent or mitigate damage to the Environment that may result from such release.
- (h) "Vendor" shall mean [name of Vendor], having a mailing address at \_\_\_\_\_, and shall also include without limitation all of Vendor's successors, assigns, and guarantors.

## **Section 2. Vendor's Representations, Warranties, and Obligations**

Section 2.1. The Vendor represents, and warrants to be true and correct, to the United States, on the date hereof and as of the closing date, that:

- (a) Vendor, and any other person or entity for whose conduct it is or may be held responsible, has no liability under, has never violated, and is presently in compliance with all Environmental Laws applicable to the Property and any

facilities and operations thereon, and, to the best of Vendor's knowledge, there exist no Environmental Conditions with respect to the Property or any facilities or operations thereon, except as set forth in Exhibit ( ), which is attached hereto and made a part hereof.

- (b) Vendor, and any other person or entity for whose conduct it is or may be held responsible, has not generated, manufactured, refined, transported, treated, stored, handled, disposed, transferred, produced, or processed any Hazardous Material or any solid waste at the Property, except in compliance with all applicable Environmental Laws, and has no knowledge of the Release or Threat of Release of any Hazardous Material at or in the vicinity of the Property, except as set forth in Exhibit ( ), which is attached hereto and made a part hereof.
- (c) No lien has been imposed on the Property by any Federal, state, or local agency in connection with the presence of any Hazardous Material on or off the Property, except as set forth in Exhibit ( ), which is attached hereto and made a part hereof.
- (d) Vendor, and any other person or entity for whose conduct it is or may be held responsible, has not:
  - (1) Entered into or been subject to any consent decree, compliance order, or administrative order with respect to the Property or any facilities or operations thereon, except as set forth in Exhibit ( ), which is attached hereto and made a part hereof;
  - (2) Received notice under the citizen suit provision of any Environmental Law in connection with the Property or any facilities or operations thereon, except as set forth in Exhibit ( ), which is attached hereto and made a part hereof;
  - (3) Received any request for information, notice, demand letter, administrative inquiry, or formal or informal complaint or claim with respect to any Environmental Condition relating to the Property or any facilities or operations thereon, except as set forth in Exhibit ( ), which is attached hereto and made a part hereof; or
  - (4) Been subject to any Federal, state, or local agency or citizen enforcement action with respect to the Property or any facilities or operations thereon, except as set forth in Exhibit ( ), which is attached hereto and made a part hereof.
- (e) Vendor has all Permits necessary for its activities and operations at the Property and for any past or ongoing alterations or improvements at the Property, which Permits are listed in Exhibit ( ), which is attached hereto and made a part hereof.

Section 2.2. Vendor covenants to the United States, from the date hereof, that:

- (a) Vendor shall provide to the United States, within \_\_\_\_ days of the date hereof, copies of all documents, records, and information in its possession or control or available to Vendor concerning Environmental Conditions relevant to the Property or any facilities or operations thereon, whether generated by Vendor or others, including, without limitation, environmental audits, risk assessments, site assessments, studies or samplings of the Property and/or any adjacent property or other property in the vicinity of the Property owned or operated by Vendor or others, documentation regarding off-site disposal of Hazardous Materials, spill control plans, and environmental agency reports and correspondence.
- (b) Vendor shall, at its sole cost and expense, take or cause to be taken all actions necessary to:
  - (1) Ensure that as of the closing date the Property, all activities and operations thereon, and all alterations and improvements thereto, comply with all applicable Environmental Laws and with any and all agreements with Federal, state, and local government agencies, court orders, and administrative orders regarding Environmental Conditions; and
  - (2) Satisfy the United States, no later than the closing date, that relevant Federal, state, and local government agencies are not likely to require any further action to remedy any Environmental Conditions.

### **Section 3. Vendor's Indemnities**

- (a) Vendor agrees to indemnify, defend, and hold harmless the United States, its officers, employees, agents, and representatives (the "Indemnitees") from and against any and all damages, claims, judgments, losses, liabilities, and expenses (including, without limitation, reasonable legal, administrative, accounting, consulting, engineering, other expenses, or civil or criminal fines or penalties, whether or not caused by negligence), that may be imposed on, incurred by, or asserted against any of the Indemnities by any other party or parties (including, without limitation, a state or local government), arising out of, in connection with, or relating to the subject matter of:
  - (1) Vendor's breach of any of the representations and warranties set forth in Section 2;
  - (2) Any Environmental Condition, relevant to the Property or any facilities or operations thereon, existing as of and/or prior to the closing date, even if not discovered until after the closing date;
  - (3) Any violation of an Environmental Law with respect to the Property or any facilities or operations thereon, existing as of and/or prior to the closing date, even if not discovered until after the closing date; or

- (4) Any Hazardous Material, relevant to the Property or any facilities or operations thereon, existing as of and/or prior to the closing date, even if not discovered until after the closing date.
- (b) This indemnity shall survive the closing and any future conveyance or transfer of title to the Property by the United States and shall be in addition to Vendor's obligations for breach of a representation or warranty set forth in Section 2.

**OPTION TO PURCHASE REAL PROPERTY**

The undersigned, hereinafter called VENDOR, in consideration of the mutual covenants and agreements herein set forth and the sum of \_\_\_\_\_ (\$ \_\_\_\_\_), the receipt of which is hereby acknowledged, grants unto the United States of America and it assigns the exclusive right and option to elect on or before \_\_\_\_\_ to purchase at and for the price of \_\_\_\_\_ (\$ \_\_\_\_\_), in accordance with the terms and conditions set forth below, that parcel of land, with the buildings and improvements thereon and all rights, hereditaments, easements, and appurtenances thereunto belonging, located in \_\_\_\_\_, bounded and described as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The above description is subject to such modifications as may be necessary to conform to a survey made by agents of the United States.

VENDOR, who represents that he/she is the owner of the property described, agreed to convey to the United States a valid indefeasible fee simple title to said parcel, subject to the following rights outstanding in third parties:

\_\_\_\_\_  
\_\_\_\_\_

and the following rights and interests to be reserved by the VENDOR, namely:

\_\_\_\_\_  
\_\_\_\_\_

The terms and conditions of this option are:

- (1) The VENDOR agrees that this option may be accepted by the United States through any duly authorized representative by delivery of a notice of acceptance, by mail (regular, express, or overnight) or by facsimile transmission, to the VENDOR at the address stated below, on or before the date set forth above.
- (2) The purchase price set forth above is payable as soon as the United States has exercised this option and thereafter has had a reasonable time within which to secure and examine the evidence of title to said land and to obtain the necessary approval of title; provided that the

VENDOR can execute and deliver to the United States a good and sufficient general warranty deed conveying said land, with the hereditaments, easements and appurtenances thereunto belonging, to the United States of America and its assigns in fee simple, free from all liens and encumbrances, together with all right, title or interest which the VENDOR may have in the banks, beds and waters of any streams opposite to or fronting upon said land, and in any alleys, roads, streets, ways, strips, gores or railroad's right-of-way abutting or adjoining said land, and in any means of ingress and egress appurtenant thereto. Said conveyance to be subject only to such outstanding rights in third parties and reservations by the VENDOR as may be set forth above.

- (3) It is understood and agreed that if the United States shall fail to exercise this option within the time specified above, then the United States shall forfeit the said sum of \_\_\_\_\_, paid to the VENDOR as consideration for this option. It is further understood and agreed that upon timely exercise of this option by the United States, the stated consideration will be applied to the purchase price of \_\_\_\_\_.
- (4) It is agreed that the United States will defray the expenses incident to the preparation and recordation of the deed to the United States and the procurement of the necessary title evidence.
- (5) The VENDOR agrees that all taxes (including those that are not due and payable), assessments, and encumbrances which are a lien against the land at the time of conveyance to the United States shall be satisfied of record by the VENDOR at or before the conveyance of title and, if the VENDOR fails to do so, the United States may pay or otherwise satisfy or discharge any taxes, assessments and encumbrances which are a lien against the land; that the amount of any such payment, satisfaction, or discharge by the United States shall be deducted from the purchase price of the land; that the VENDOR will, at the request of the United States and without prior payment or tender of the purchase price, execute and deliver the general warranty deed to the United States, pay the documentary stamp tax and obtain and record such other curative evidence of title as may be required by the United States.
- (6) The VENDOR agrees that loss or damage to the property by fire or acts of God shall be at the risk of the VENDOR until the title to the land and deed to the United States have been accepted by the United States through its duly authorized representative or until the right of occupancy and use of the land, as herein below provided for, has been exercised by the United States; and, in the event that such loss or damage occurs, the United States may, without liability, refuse to accept conveyance of the title or it may elect to accept conveyance of title to such property, in which case the property will be appraised and there shall be an equitable adjustment of the purchase price.
- (7) The VENDOR herein agrees that any move from the property is the direct result of VENDOR's decision to place the property on the open market, that decision having been made prior to VENDOR's learning of any United States' initiative to acquire the property. The VENDOR agrees that VENDOR is not a "displaced person" as that term is defined by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601 *et seq.*
- (8) As additional consideration for the payment of the purchase price hereinabove set forth, the VENDOR hereby grants to the United States the right to immediate occupancy and use of the land for any purpose whatsoever from and after the exercise by the United States of this



option until such time as said land is conveyed to the United States and, upon demand, the VENDOR will immediately vacate the property and deliver possession to the United States.

- (9) It is agreed that the spouse, if any, of the VENDOR, by signing below, agrees to join in any deed to the United States and to execute any instrument deemed necessary to convey to the United States any separate or community estate or interest in the subject property and to relinquish and release any dower, courtesy, homestead or other rights or interests of such spouse therein.
- (10) The VENDOR represents and it is a condition of acceptance of this offer that no member or delegate to Congress, or resident commissioner, shall be admitted to or share any part of this agreement, or to any benefits that may arise there from; but this provision shall not be construed to extend to any agreement if made with a corporation for its general benefit.
- (11) GRATUITIES.
  - (a) The United States may, by written notice to the VENDOR, terminate the right of the VENDOR to proceed under this agreement if it is found, after notice and hearing, by the Secretary of Transportation or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the VENDOR, or any agent or representative of the VENDOR, to any officer or employee of the United States with a view toward securing this agreement, or favorable treatment with respect to the awarding or amending of this agreement, or to the making of any determinations with respect to the performing of such agreement: Provided, that the existence of the facts upon which the Secretary or his duly authorized representative makes such findings shall be in issue and may be reviewed by any competent court.
  - (b) In the event this agreement is terminated as provided in paragraph (11)(a), the United States shall be entitled: (i) to pursue the same remedies against the Vendor as it could pursue in the event of breach of the contract by the VENDOR, and (ii) as a penalty, in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the VENDOR in providing any such gratuities to any such officer or employee.
  - (c) The rights and remedies of the United States provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.
- (12) COVENANT AGAINST CONTINGENT FEES. The VENDOR warrants that no person or selling agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the VENDOR for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this agreement without liability or in its discretion to deduct from the purchase price the full amount of such commission, percentage, brokerage or contingent fee. The United States agrees that this covenant shall not apply to licensed real estate agents performing their normal functions.
- (13) The terms and conditions aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the VENDOR.

(14) The terms and conditions with respect to this option are expressly contained herein, and the VENDOR agrees that no representative or agent of the United States has made any representation or promise with respect to this offer not expressly contained herein.

(15) Notice of exercise of this option is to be sent on or before the specified date to:

\_\_\_\_\_  
Name Address

Signed, Sealed, and Delivered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Witness VENDOR (Seal).

\_\_\_\_\_  
Witness Spouse of VENDOR (Seal).

NOTICE OF EXERCISE OF OPTION TO PURCHASE REAL PROPERTY

\_\_\_\_\_.  
(Date)

TO: \_\_\_\_\_.  
(Name)

\_\_\_\_\_.  
(Address)

In accordance with the terms of an Option to Purchase Real Property executed as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, notice is hereby given that the United States of America hereby exercises and accepts said option.

Date: \_\_\_\_\_.  
(Name and Title)

CERTIFICATION BY NOTARY PUBLIC

## CERTIFICATE OF NON-INTERFERENCE

I certify that as pertains to Lot Numbers 416, 417 and 418, as shown on a Plat entitled, "Section No. 1 of Chester Harbor," which said plat is recorded among the Land Records of Queen Anne's County, Maryland, in Liber T. S. P. No. 49, Folio 39, presently owned by Harry J. Smith and Diane H. Smith, husband and wife, the following easements and encumbrances will not interfere with Coast Guard's contemplated use of the subject real property as a site for military family housing:

(1) Right-of-Way Easement to Grisam Electric Cooperative, Inc., dated December 15, 1999, and recorded among the Land Records for Queen Anne's County, Maryland, in Liber C. W. C. No. 103, Folio 731. Purpose - to construct, maintain and operate electric lines.

(2) Those conditions and restrictions contained in the deed from Chester Harbor, Inc., to James J. Smith and Kathleen C. Smith, husband and wife, dated October 15, 1999, and recorded among the land records for Queen Anne's County, Maryland, in Liber C. W. C. No. 98, Folio 822. .

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

By \_\_\_\_\_.  
[Closing Attorney Name]  
[Identify Servicing Legal Staff]  
United States Coast Guard

**SAMPLE**

## GENERAL WARRANTY DEED

THIS DEED, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_, hereinafter "Grantor," and the United States of America, acting by and through the authority vested in the Secretary of Transportation, as delegated to the Commandant, United States Coast Guard (USCG), and as further delegated to a duly authorized representative of the USCG, hereinafter, "Grantee."

WITNESSETH, that in consideration of the sum of \_\_\_\_\_, the receipt whereof is hereby expressly acknowledged, the Grantor does hereby grant and convey unto Grantee, and its assigns, in fee simple:

A certain parcel of land, together with the improvements thereon, situate, lying and located in the [Town, City, Municipality, Election District], County of \_\_\_\_\_, State of \_\_\_\_\_, and more particularly described as follows: [metes and bounds or other legal description].

BEING a part of the land described in a deed from \_\_\_\_\_, to \_\_\_\_\_ dated \_\_\_\_\_, and recorded in the Land Record Books of \_\_\_\_\_ County, State of \_\_\_\_\_ under Liber \_\_\_\_\_, Folio \_\_\_\_\_, and being more particularly shown upon a map made by \_\_\_\_\_, \_\_\_\_\_ entitled \_\_\_\_\_.

TOGETHER with all rights, privileges, appurtenances and advantages to the same belonging, abutting, adjoining, or otherwise appertaining.

SUBJECT to the following rights outstanding in third parties:

TO HAVE AND TO HOLD the said land, above described, and hereby intended to be conveyed, to the Grantee and its assigns, in fee simple.

AND Grantor hereby covenants that it will warrant generally the property hereby conveyed, that it is seized of the property hereby conveyed, that it has the right to convey said land, that the Grantee and its assigns shall quietly enjoy said land, and Grantor covenants further it has done no act to encumber said land, and that Grantor will execute such other and further assurances of said land as may be requisite.

WITNESS the hands and seals of the said Grantor(s).

ATTEST:

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_.

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_.

STATE OF \_\_\_\_\_, TO WIT:

I HEREBY CERTIFY, that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before the subscriber, a Notary Public of the State of \_\_\_\_\_ in and for the County aforesaid, personally appeared [Grantor(s) name(s)], the above named Grantor(s) and acknowledged the foregoing deed to be their respective act.

AS WITNESS my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_.

## OFFER TO EXCHANGE REAL PROPERTY

The undersigned, hereinafter called the VENDOR, in consideration of the mutual covenants and agreements herein set forth, offers to sell and convey to the United States of America and its assigns, the fee simple title to the following described land, with the building and improvements thereon, and all rights, hereditaments, easements, and appurtenances thereunto belonging, having an agreed monetary value of \_\_\_\_\_ located in the County of \_\_\_\_\_, State of \_\_\_\_\_, bounded and described as follows: \_\_\_\_\_.

\_\_\_\_\_.

Subject to the following rights outstanding in third parties: \_\_\_\_\_.

\_\_\_\_\_.

Excepting and reserving only the following rights and interests in the above described property:

The terms and conditions of this offer are as follows:

- (1) The VENDOR agrees that this offer may be accepted by the United States through any duly authorized representative, by delivery of a notice of acceptance, by mail (regular, express, or overnight) or by facsimile transmission, to the VENDOR at the address stated below, at any time within \_\_\_\_\_ ( ) month(s) from the date hereof, whereupon this offer and the acceptance thereof become a binding contract.
- (2) The United States of America agrees to convey by quitclaim deed to the VENDOR all of its right, title, and interest in the land described in Schedule A, on the acceptance of this offer and approval of the VENDOR's title; provided the VENDOR can execute and deliver a good and sufficient general warranty deed conveying VENDOR's land with the hereditaments and appurtenances thereunto belonging to the United States of America and its assigns, in fee simple, free and clear from all liens and encumbrances, together with all right, title, and interest of the VENDOR in and to any streams, alleys, roads, streets, ways, strips, gores, or railroad rights of-way abutting or adjoining said land.
- (3) It is agreed that the United States will defray the expenses incident to the preparation and recordation of the deed to the United States and the procurement of the necessary title evidence to the land that will be conveyed to the United States.
- (4) It is agreed that the VENDOR will defray the expenses incident to the preparation and recordation of the deed to the VENDOR and the procurement of the necessary title evidence to the land that will be conveyed to the VENDOR.
- (5) The VENDOR agrees that all taxes (including those that are not due and payable), assessments, and encumbrances which are a lien against the land at the time of conveyance to the United States shall be satisfied of record by the VENDOR at or before the conveyance of title; that the VENDOR will, at the request of the United States and without prior tender of the quitclaim deed from the United States, execute and deliver the general warranty deed to the United States, pay the documentary revenue stamp tax, and obtain and

record such other curative evidence of title as may be required by the United States.

- (6) Each Grantor agrees that loss or damage to the property by fire or acts of God shall be at the risk of the Grantor until the title to the land and deed to the respective Grantee have been accepted by the respective Grantee through its duly authorized representative. In the event that such loss or damage occurs, the respective Grantee may, without liability, refuse to accept conveyance of the title, it may also elect to accept conveyance of title to such property, in which case there shall be an equitable monetary adjustment based upon a reappraisal of the damaged property.
- (7) The VENDOR agrees that VENDOR is not a "displaced person" as that term is defined by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601 *et seq.*
- (8) It is agreed that the spouse, if any, of the VENDOR, by signing below, agrees to join in any deed to the United States and to execute any instrument deemed necessary to convey to the United States any separate or community estate or interest in the subject property and to relinquish and release any dower, curtesy, homestead, or other rights or interests of such spouse therein.
- (9) The VENDOR agreement represents a condition of acceptance of this offer, and no member or delegate to Congress, or resident commissioner, shall be admitted to or share any part of this agreement, or to any benefits that may arise there from; but this provision shall not be construed to extend to any agreement if made with a corporation for its general benefit.
- (10) GRATUITIES.
  - (a) The United States may, by written notice to the VENDOR, terminate the right of the VENDOR to proceed under this agreement if it is found, after notice and hearing, by the Secretary of Transportation or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the VENDOR, or any agent or representative of the VENDOR, to any officer or employee of the United States with a view toward securing this agreement, or favorable treatment with respect to the awarding or amending of this agreement, or to the making of any determinations with respect to the performing of such agreement: Provided, that the existence of the facts upon which the Secretary or his duly authorized representative makes such findings shall be in issue and may be reviewed by any competent court.
  - (b) In the event this agreement is terminated as provided in paragraph (10)(a), the United States shall be entitled: (i) to pursue the same remedies against the Vendor as it could pursue in the event of breach of the contract by the VENDOR, and (ii) as a penalty, in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the VENDOR in providing any such gratuities to any such officer or employee.
  - (c) The rights and remedies of the United States provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.



- (11) COVENANT AGAINST CONTINGENT FEES. The VENDOR warrants that no person or selling agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the VENDOR for the purpose of securing business. For breach or violation of this warranty the United States shall have the right to annul this agreement without liability or in its discretion to deduct from the purchase price the full amount of such commission, percentage, brokerage, or contingent fee. The United States agrees that this covenant shall not apply to licensed real estate agents performing their normal functions.
- (12) The terms and conditions aforesaid are to apply to and bind the heirs, executors, administrators, successors, and assigns of the VENDOR.
- (13) All terms and conditions with respect to this offer are expressly contained herein and the VENDOR agrees that no representative or agent of the United States has made any representation or promise with respect to this offer not expressly contained herein.

Signed, Sealed, and Delivered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
VENDOR

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Spouse of VENDOR

Notice of acceptance of this offer is to be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### ACCEPTANCE OF OFFER TO EXCHANGE REAL PROPERTY

The Offer of the VENDOR contained herein is hereby accepted for and on behalf of the United States of America.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Name and Title)

\_\_\_\_\_  
(Name and Title)

WITNESS:\_\_\_\_\_.

CERTIFICATION BY NOTARY PUBLIC:

## CHAPTER 3. REAL PROPERTY DISPOSALS

### I. GENERAL MATTERS

#### A. Introduction

1. Chapter Overview. This chapter covers the authorities, policies, and procedures under which the Coast Guard disposes of real property interests. Section II of this chapter will provide a general overview of the Coast Guard's environmental responsibilities when disposing of real property. Section III will cover the standard, government-wide disposal process administered by the General Services Administration (GSA), the Federal agency charged with primary responsibility for managing the Federal government's real property inventory. Section III will also cover the disposal of public domain lands as well as the disposal of historic lighthouse properties under the National Historic Lighthouse Preservation Act of 2000 (NHLPA). Section IV will cover specific legislative conveyances of Coast Guard controlled real property and other disposal authorities (*e.g.*, sale authorities). This chapter does not cover:
  - a. Disposals of Coast Guard controlled real property to the other armed forces (commonly known as a Title 10 transfer);
  - b. Disposals of Coast Guard controlled real property to other Federal agencies other than those conducted pursuant to the GSA administered standard, government-wide disposal process, the public domain lands disposal process, or the NHLPA;
  - c. Disposals of Coast Guard controlled leasehold interests (in-leases);
  - d. The demolition or other disposal of improvements when the underlying land is retained; or
  - e. The granting of outleases, easements, or real property licenses by the Coast Guard to non-Federal entities.
2. Federal Ownership. All Coast Guard controlled real property interests are owned or held by the United States of America. The Coast Guard cannot hold legal title or ownership, in its own name, to real property interests. Rather, the Coast Guard is the Federal agency with administrative accountability, control, and custody over the subject real property. Under the GSA system, GSA would dispose of the property by either transferring it to another Federal agency or conveying it to a non-Federal entity. Thus, the Coast Guard is the "holding agency" and GSA is the "disposal agency." In a disposal action authorized or mandated by specific legislation, either the Coast Guard or GSA may be the disposal agency.

3. Authority. The Coast Guard has no independent, permanent disposal authority. In general, real property is disposed of in accordance with the GSA system (historic lighthouse properties would be disposed of by GSA in accordance with the NHLPA). The GSA system handles acquired real property and lands withdrawn from the public domain that are no longer deemed suitable to be returned to the public domain (for definitions of “acquired land” and “public domain land,” see Glossary). Withdrawn public domain lands that are suitable for return to the public domain are handled under a parallel system administered by the Bureau of Land Management, Department of the Interior.
4. Personal Property. Personal property, except for related personal property, is disposed of in accordance with the Property Management Manual, COMDTINST M4500.5A (for definitions of “personal property” and “related personal property,” see Glossary).

## **B. Disposal Regimes**

1. The Coast Guard will generally dispose of real property in one of the following situations:
  - a. The Coast Guard no longer has an operational need for the subject real property;
  - b. The Coast Guard continues to have an operational need for the subject real property, but another site, better suited to the Coast Guard’s operational needs, may be available;  
or
  - c. The Coast Guard may or may not have a continuing operational need for all or part of the subject real property, but specific legislation, enacted into law, directs the Coast Guard (or GSA) to convey a specifically identified Coast Guard controlled real property (the legislation usually identifies a specific recipient as well).
2. The disposal described in subparagraph I.B.1.a. will usually be processed under the GSA system. The disposal described in subparagraph I.B.1.b. will typically be driven by the Coast Guard’s intention to acquire a property better suited to the Coast Guard’s needs and as such, involve either the Coast Guard’s exchange authority or the GSA relocation authority, which as acquisition authorities, are discussed in Chapter 2. Finally, the disposal described in subparagraph I.B.1.c. is a specific legislative conveyance.

## II. ENVIRONMENTAL CONSIDERATIONS

### A. General

1. Environmental considerations are a primary concern when disposing of real property. This section discusses, generally, the environmental laws and executive orders that may be implicated in property disposals, and explains the environmental issues that arise in *all* disposals of Coast Guard property. Many environmental requirements differ, however, depending on the “regime” or authority under which a particular disposal action is being carried out (see subsection I.B.). These particular requirements are discussed more fully in sections III and IV.
2. There are two federal statutes that impact all of the Coast Guard’s real property disposal actions: the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601-9675, and the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321-4370e.
  - a. CERCLA. CERCLA focuses on property contamination from hazardous substances (as that term is defined by CERCLA (42 U.S.C. § 9601(14))). Subsections II.B.-E. discuss how CERCLA issues interact with the disposal process in general. Specific CERCLA issues that arise under the different disposal regimes are discussed in Sections III and IV.
  - b. NEPA. The objective of NEPA is to ensure that Federal agencies conduct a complete analysis of environmental information in agency decision-making. NEPA also has the objective of ensuring the public is involved in the decision making process. A detailed discussion of NEPA is set forth in the NEPA Implementing Procedures and Policy for Considering Environmental Impacts Manual, COMDTINST M16475.1(series) (**hereafter referred to as the NEPA Manual**). By properly following the procedures set out in the NEPA Manual and in sections III or IV, the Coast Guard will have satisfied its statutory obligations under NEPA. See paragraphs II.A.3.-4. for compliance with other environmental laws, regulations, and executive orders.
3. Given the Coast Guard’s unique inventory, which includes historic lighthouses and small boat stations, as well as other properties located on coastal areas, the following two laws are of particular note:
  - a. National Historic Preservation Act (NHPA). The NHPA, as amended, establishes as Federal policy the protection of historic sites and values in cooperation with state, local, and tribal governments. The NHPA is a procedural law and as such, imposes no ultimate preservation requirement or result provided that the mandated procedures are followed. The NHPA established the National Register of Historic Places (NRHP). The NRHP lists sites, districts, buildings, structures, and objects of significance in American history, architecture, archeology, engineering, and culture. NRHP resources may be of national, state, or local significance. Section 106 of the NHPA requires

Federal agencies to consider the effects of their undertakings on properties eligible for or listed in the NRHP. Pursuant to the NHPA, each state, the District of Columbia, and the various territories of the United States have designated an official to act as the state's or territory's representative for historic preservation matters, commonly referred to as the State Historic Preservation Officer (SHPO). In addition, the NHPA allows each recognized Indian tribe and other respective Native American entities to appoint a Tribal Historic Preservation Officer (THPO). Compliance with NHPA typically requires consultations with the requisite SHPO or THPO.

- b. Coastal Zone Management Act of 1972, 16 U.S.C. § 1456 (CZMA). The CZMA requires each Federal agency conducting or supporting activities directly affecting a designated coastal zone to conduct or support those activities in a manner that is consistent with approved State coastal zone management programs. In general, a mere change in ownership or control of real property does not affect any land or water use or natural resource of the coastal zone. Therefore, the Federal consistency provisions of the CZMA are not triggered by property disposals unless the Coast Guard intends to continue a project on the property after the transfer. In such a case, the consistency determination will consider only those Coast Guard activities on the property after disposal as they relate to enforceable policies of the state coastal plan. Though the subsequent activities of the property recipient may affect land or water use or natural resources of the coastal zone, this will occur after the property has passed from Coast Guard control. The activities of the recipient will either be subject to state and local law or, if the recipient is another Federal agency, the consistency provisions of the CZMA. That Federal agency, as opposed to the Coast Guard, will be responsible for determining consistency.
4. Other Environmental Laws and Executive Orders. The procedures and requirements of NEPA will help to identify potential obligations under other applicable environmental laws and executive orders. In particular, the disposal of real property and any connected or related actions to the disposal (*e.g.*, closure and/or decommissioning of stations, removal of personal property from the subject real property, reduction in maintenance levels, etc.) may trigger various obligations under the National Historic Preservation Act, the Endangered Species Act, the Coastal Zone Management Act, and the executive orders concerning floodplains and wetlands. See enclosure (2) of the NEPA Manual for a comprehensive list of the applicable laws and executive orders.

## **B. Determining Existence of Hazardous Substance Contamination**

1. General. The servicing environmental staff must determine whether hazardous substances contaminate the subject real property. This determination enables the Coast Guard to comply with section 120(h) of CERCLA (42 U.S.C. § 9620(h)), which must be satisfied before the United States can convey real property to a non-Federal entity. The servicing environmental staff makes this determination by conducting a contamination survey. In general, if the subject real property is contaminated by hazardous substances (as defined under CERCLA, 42 U.S.C. § 9601(14)), the Coast Guard must perform all remedial action necessary to protect human health and the environment before the property can be

conveyed to a non-Federal entity. There are some instances when property may be conveyed prior to completion of remediation—these are described below in subsection II.C. Remediation is not required for transfer to another Federal agency.

- a. Petroleum. While petroleum is specifically excepted from the CERCLA definition of hazardous substance, the hazardous constituents of petroleum products (gasoline additives, petroleum storage tank bottom residue and separated chemical components) do fall within the definition. Therefore, the contamination survey process described below should include petroleum products and their constituents within the list of hazardous substances being surveyed.
2. Contamination Survey. Prior to the disposal of the subject real property, the servicing environmental staff shall conduct a contamination survey to determine the presence of CERCLA hazardous substances. Contamination surveys have been referred to in prior guidance as “environmental site assessments.”
  - a. Use of Information. A contamination survey is a systematic procedure to evaluate potential CERCLA hazardous substance contamination. If the survey identifies any contamination, the resulting information will assist in determining what, if any, remedial actions are required by CERCLA § 120(h) prior to conveyance to a non-Federal entity. Conversely, if no evidence of contamination is discovered through the survey process, the results may be used to satisfy criteria established in CERCLA § 120(h)(4) (42 U.S.C. § 9620(h)(4)) for identification of uncontaminated property. The survey also establishes a baseline on the property’s environmental condition prior to disposal that serves to protect the United States from liability for any hazardous substance contamination that occurs after the conveyance (*i.e.*, after title transfers from the United States to the non-Federal entity). Similarly, the survey may protect the Coast Guard in an inter-Federal agency transfer in the event the transferee Federal agency contaminates the property.
  - b. Requirements. The following requirements apply to Coast Guard contamination surveys:
    - (1) A contamination survey and, if appropriate, any confirmation sampling (see paragraphs II.B.3.-5.), shall be conducted on each real property **prior** to disposal (*i.e.*, prior to the property’s conveyance to a non-Federal entity or to the property’s transfer to another Federal agency).
    - (2) Contamination surveys shall be conducted in accordance with the informational requirements for the Phase 1 Liability Assessment set forth in Chapter 4 of the “Civilian Federal Agency Task Force, Guide on Evaluating Environmental Liability for Property Transfers” Document (CFATF Document). This document can be found on the Internet at <http://es.epa.gov/oeca/fedfac/policy/eddado.pdf>. Alternative survey protocols are acceptable so long as they satisfy the basic requirements of a Phase 1 Liability Assessment.

- (3) A Phase 1 Liability Assessment shall include a review of existing records, visual survey of the site, appropriate interviews, and a report in any reasonable format sufficient to meet the information requirements in the CFATF Document. Sampling is not performed for a contamination survey.
3. Confirmation Sampling. Physical sampling (*e.g.*, the taking of soil samples) is an additional level of environmental analysis of the subject real property. As described in paragraph II.B.4., physical sampling may be mandatory, discretionary, or not required, depending on the results of the contamination survey and the nature of any structures on the property. The purpose of physical sampling is to determine if actual contamination exists in the suspected areas noted in the contamination survey. If the sampling results indicate that there is no existing contamination, the disposal process may proceed. If the sampling results indicate contamination, remediation may be necessary prior to disposal.
4. Confirmation Sampling/Requirements. Physical sampling is required if the contamination survey indicates that disposal or a release of a CERCLA hazardous substance may have occurred. The sampling **must** be conducted before the disposal action may proceed. If the contamination survey does not disclose any release, then sampling is not normally required. Sampling, however, may be appropriate, even if there is no indication of a release, if certain types of structures, such as lighthouses or towers, are located upon the subject real property. Maintenance procedures for such structures, or the weathering of such structures, may have resulted in releases of lead or solvents. In such cases, professional judgment must be exercised in determining whether it is in the Coast Guard's interest to conduct sampling. Factors to consider include:
- a. The desirability of establishing a baseline to protect the United States, and specifically the Coast Guard, against liability for possible future release of CERCLA hazardous substances by the recipient of the subject real property;
  - b. The possibility of employing land use controls (see paragraph II.C.5.) at the time of conveyance to avoid soil treatment or removal that might otherwise be required;
  - c. The potential for complication of any existing contamination, *e.g.*, the possibility that lead present in the soil may ultimately leach into groundwater/drinking water and exacerbate what may have been a fairly simple removal action; and
  - d. The possibility that the use of the property may change in the future and result in more stringent regulation of lead levels (*e.g.*, the recipient will use the property as the site for a school or daycare center).
5. Confirmation Sampling/Protocol. Confirmation sampling shall be conducted in accordance with Chapter 5 of the CFATF Document, "Phase II – Confirmation Sampling." The essence of confirmation sampling procedures is to take appropriate physical samples of suspected areas of contamination, conduct appropriate laboratory analysis, and generate a report. The specific characteristics of the suspected areas of contamination will dictate the type and scope of sampling.



6. Release Notification. If a release of hazardous substances is discovered through the contamination survey or confirmation sampling, the notification of appropriate authorities may be required. Substance releases requiring notification include those defined as hazardous substances under EPCRA (Emergency Planning and Community Right-to-Know Act) as well as CERCLA. For additional information on release notification see Commanding Officer's Environmental Guide, COMDTPUB P5090.1(series).
  - a. CERCLA Release. If a CERCLA hazardous substance has been released into the environment in a quantity equal to or greater than its reportable quantity (listed at 40 C.F.R. § 302.4) within a 24-hour period, the National Response Center must be notified immediately (<http://www.nrc.uscg.mil>).
  - b. EPCRA Release. If a EPCRA hazardous substance has been released into the environment in a quantity equal to or greater than its reportable quantity (listed both in Emergency Planning and Community Right-to-Know Act and Pollution Prevention Manual, COMDTINST M16455.10(series) (**EPCRA Manual**) and at 40 C.F.R. § 355) within a 24-hour period, the National Response Center must be notified immediately (<http://www.nrc.uscg.mil>). For additional information on release notification see the EPCRA Manual.
  - c. Consultation with Servicing Legal Staff. The servicing environmental staff shall consult with the servicing legal staff in those instances in which it is uncertain whether an identified release of a CERCLA or EPCRA hazardous substance occurred within a 24-hour period in a reportable quantity.

### **C. Remediation of Hazardous Substance Contamination**

1. General. Except as described in paragraphs II.C.3.-5. below, if the contamination survey indicates contamination by CERCLA hazardous substances, the Coast Guard must perform all remedial action necessary to protect human health and the environment before the subject real property can be conveyed to a non-Federal entity. Such remediation generally involves cleaning up or removing the hazardous substances from the subject real property. This remedial action is required, and must be conducted by or arranged for by the Coast Guard, regardless of whether GSA or the Coast Guard disposes of the property.
2. Transfers to Other Federal Agencies. There is no requirement to complete or conduct any remedial action if the subject real property is being transferred to another Federal agency (as the United States of America continues to hold the property's legal title).
3. Demonstration of Approved Remedial Design. Pursuant to CERCLA, the subject real property may be conveyed to a non-Federal entity, although contaminated, if the construction and installation of an approved remedial design has been completed, and the remedy has been demonstrated to the Environmental Protection Agency (EPA) to be operating properly and successfully. Prior to demonstrating the proposed remedial design to the EPA, Commandant (G-CCS) approval (via Commandant (G-SEC)) is required if the

proposed remedial design obligates or has the possibility of obligating future fiscal year funds.

4. Early Transfer Authority (ETA). CERCLA allows the conveyance of real property to non-Federal entities prior to the completion of any required environmental remediation under ETA, if certain approvals are obtained. The use of ETA does not fulfill the Coast Guard's remediation obligation, rather, it merely allows the Coast Guard (or GSA) to convey title to the property before the completion of remediation.
  - a. ETA Requirements. The Federal agency controlling contaminated real property must satisfy several requirements before conveying the property, including obtaining the concurrence of the governor of the state in which the property is located. If the subject real property is listed on the National Priorities List (NPL), the approval of the EPA Administrator is required in addition to that of the governor. The servicing environmental staff, in consultation with the servicing legal staff, shall determine whether a given property is a viable candidate for ETA.
  - b. ETA Approvals. Prior to seeking approval from the state governor (and the EPA Administrator in the case of NPL property), Commandant (G-CCS) must approve all Coast Guard requests to use ETA. Commandant (G-CCS) approval (via Commandant (G-SEC)) is required because of the necessary commitment, subject to the availability of funds, to expend Coast Guard funds in future years. ETA requests shall be submitted to Commandant (G-SEC) as early as possible during the disposal process. Commandant (G-SEC) shall consult with Commandant (G-LEL) and (G-LGL) before seeking Commandant (G-CCS) approval.
  - c. ETA/Commandant (G-SEC) Action. If approved by Commandant (G-CCS), the servicing environmental staff will proceed to seek ETA approval from the state governor and if necessary, the EPA Administrator.
5. Land Use Controls (LUCs).
  - a. General. One acceptable method of "remediation" for any particular property may include controls, or restrictions, on use of the property, designed generally to reduce risk to human health by reducing potential exposure of humans to contaminants. In some contamination scenarios, CERCLA compliance may actually be more effective if the contamination is left undisturbed and the Coast Guard takes actions to reduce the possibility of individuals coming into contact with the contamination. Examples of LUCs may be limiting future use of the site to specific purposes (*e.g.*, industrial uses) or prohibiting certain uses (*e.g.*, not allowing the property to be used for residential purposes), or requiring the recipient to take specific measures to reduce or eliminate human contact (*e.g.*, installing fences around the contaminated site).
  - b. Requirements. Commandant (G-CCS) approval (via Commandant (G-SEC)) is required if the proposed LUC obligates or has the possibility of obligating future fiscal year funds. The proposed LUC must be accepted as adequate by the environmental

regulator(s) concerned. The LUC must “run with the land” in order to be enforceable (*i.e.*, encumber the land regardless of who owns it) and as such, must be included in the quitclaim deed conveying the property as a restrictive covenant. In the case of transfers under the GSA system, GSA must also approve of such restrictions (GSA would then place the restrictions in the quitclaim deed). In specific legislative conveyances, GSA approval may be required depending on GSA’s role, if any, in the disposal action (typically, the potential for the use of LUCs will be a matter for negotiation among the Coast Guard and/or GSA, the regulators, and the identified recipient). If the Coast Guard is responsible for disposing of the property, the servicing legal staff must ensure that the LUCs are adequately described within the quitclaim deed.

#### **D. Asbestos-Containing Materials (ACM)**

1. General. Asbestos is a CERCLA hazardous substance and, to the extent it has been released into the exterior environment as determined by the contamination survey and any confirmation sampling, it must be remediated in accordance with the procedures set forth in subsection II.C. ACM that is incorporated into structures, however, is not subject to CERCLA remediation requirements although the type, location, and condition of the ACM, to the extent that these can be reasonably ascertained, must be reported to GSA or BLM, as appropriate, or directly to the recipient of the property if the Coast Guard is acting as the disposal agency.
2. Friable and Nonfriable ACM. Friable ACM contains more than one percent (1%) asbestos by weight and can, by hand pressure, be crumbled, pulverized or reduced to powder. It is Coast Guard policy that *damaged* friable asbestos, that is, ACM that has in fact been crumbled, pulverized or reduced to powder, allowing for the release of fibers into the air, shall be abated prior to disposal of the property. Nonfriable and undamaged friable ACM shall remain undisturbed.

#### **E. Lead Based Paint (LBP)**

1. Exterior LBP. Lead is a CERCLA hazardous substance. Generally, LBP on exterior surfaces may suggest the possibility that lead has been released into the environment (usually by entry into the soil). If the contamination survey and any confirmation sampling (see subsection II.B.) indicate lead contamination in the soil, then CERCLA regulations are triggered and the contamination may require remediation. Any such remediation should also address abatement of the immediate source of any continuing release, for example, peeling or damaged LBP on exterior surfaces.
  - a. Toxic Substance Control Act (TSCA), 15 U.S.C. §§ 2601, 2688. If lead contaminated soil is near a residential area, then TSCA rather than CERCLA remediation regulations may apply. The servicing environmental staff shall consult the servicing legal staff for advice in determining which regulatory requirements apply.
2. Interior LBP/General. LBP located in the interior of structures is not subject to any CERCLA requirements. Other legal requirements, however, may arise if the Coast Guard

conveys housing to non-Federal entities. Additionally, the sovereign immunity of the United States has been waived for LBP hazards at Federal facilities pursuant to the TSCA. Therefore, applicable state and local requirements regarding interior LBP must also be satisfied prior to conveyance. These state and local requirements are not discussed here, and must be researched independently. The nature of the Federal requirements for interior LBP varies for residential and non-residential properties.

3. Interior LBP in Non-residential Structures. Notice to recipients of the potential existence of interior LBP in non-residential structures is required in all cases. “Potential existence” occurs in any structure on the property that was built before 1978. No testing is required, but if the location of LBP and/or LBP hazards are known, then the recipient of the property must be notified of such location (via GSA if GSA is the disposal agency).
4. Interior LBP in Coast Guard Controlled Housing/General. If housing is present upon the subject real property, and if the property is being conveyed to a non-Federal entity, then the servicing environmental staff must determine if the regulations of the Department of Housing and Urban Development (HUD), at 24 C.F.R. Part 35, Subparts B and C apply. In general, these HUD regulations apply to properties that have housing constructed prior to 1978. The HUD regulations do not apply to zero-bedroom dwellings (*e.g.*, a military barracks) unless occupied by a child under 6 years of age nor do they apply to housing that is going to be demolished. Also, the HUD regulations do not apply to a transfer of housing to another Federal agency. For more guidance on the applicability of the HUD regulations, see enclosures (1) and (2), entitled “Interior LBP Flowchart 1 and 2,” respectively. If HUD regulations apply, then the servicing environmental staff shall follow the procedures set forth in paragraphs II.E.5.-6. below.
5. Interior LBP in Coast Guard Controlled Housing/Timing. The HUD regulations impose lead hazard inspection, risk assessment, abatement, and disclosure requirements on a Federal agency conveying housing to a non-Federal entity. When the Coast Guard notifies GSA that it no longer has a need for the subject housing via the report of excess, it is generally not known if the subject housing will be transferred to another Federal agency or conveyed to a non-Federal entity. **Thus, the actions described in paragraph II.E.6., below, are required at different times, if at all, depending on whether the property is conveyed to a non-Federal entity, and whether the disposal action is conducted under the GSA system or other authority.**
  - a. GSA System. As it is not known whether GSA will transfer the subject housing to another Federal agency or convey it to a non-Federal entity, any and all inspection, risk assessment, and abatement that may be required by the HUD regulations will not be conducted **until and unless** the housing is screened for Federal interest and declared surplus by GSA (see subsection III.D.).
  - b. Specific Legislative Conveyances. When the subject housing is to be conveyed pursuant to a specific authority (see section IV), all inspection, risk assessment, abatement, and disclosure actions required shall be accomplished by the Coast Guard as necessary to allow timely conveyance of the property.

6. Interior LBP in Coast Guard Controlled Housing/Procedures. If the HUD regulations apply, then the following actions are required before the subject real property may be conveyed to a non-Federal entity (see also enclosure (3) entitled “Interior LBP Flowchart 3”):

a. State Law LBP Requirements. In addition to the responsibilities discussed below, the servicing environmental staff shall ensure compliance with all relevant state laws and local requirements for interior LBP, including disposal of LBP debris resulting from abatement. These state and local requirements are mandatory as the Toxic Substance Control Act (TSCA) waives sovereign immunity (*i.e.*, allows the United States to be sued under state and local laws) for LBP hazards at Federal facilities (see TSCA, 15 U.S.C. § 2688). If state or local requirements address the same matter(s) as the Federal requirements discussed below, the servicing environmental staff shall comply with whichever requirement is more stringent.

b. LBP Inspection and Risk Assessment.

(1) General. Both a LBP inspection **and** risk assessment must be conducted before the property may be conveyed (see 24 C.F.R. § 35.210(a) or 35.215). An appropriately certified individual must conduct the LBP inspection and risk assessment in accordance with 40 C.F.R. § 745.227 (unless such inspection and risk assessment were conducted prior to 1 March 2000). For LBP inspections and risk assessments conducted prior to 1 March 2000, the servicing environmental staff shall refer to the HUD standard of conduct requirements in 24 C.F.R. § 35.165(a) and (b).

(2) Provided to Recipient. The results of both the LBP inspection **and** risk assessment must be provided to the recipient—in a disposal conducted under the GSA system, the servicing real property staff shall forward the results to GSA; in a disposal conducted under a specific authority, the servicing real property staff shall forward the results to the servicing legal staff. If a Coast Guard Environmental Risk Assessment (ERA) report exists for the subject real property, the ERA results can be submitted to the recipient.

(3) One-Year Requirement. If abatement is to be conducted, the risk assessment may not be older than one year at the commencement of the abatement.

c. Abatement

(1) General. Abatement is required for interior LBP hazards identified in housing **constructed before 1960** if the subject real property is to be conveyed to a non-Federal entity. It is Coast Guard policy that abatement will normally be completed by the Coast Guard prior to the conveyance (see clause (3) of this subparagraph for exceptions.) An appropriately certified individual must conduct the abatement in accordance with 40 C.F.R. § 745.227 (unless conducted prior to 1 March 2000). For abatement conducted prior to 1 March 2000, the servicing environmental staff

shall refer to the HUD standard of conduct requirements in 24 C.F.R. § 35.165(d) to determine compliance with the abatement requirement. The abatement work must pass a clearance test conducted in accordance with 40 C.F.R. § 745.227.

- (2) Abatement/Resource Conservation and Recovery Act (RCRA). EPA has opined that lead debris resulting from LBP abatement falls under the RCRA household waste exemption even if a contractor performs the abatement work. Abatement lead debris, therefore, is *not* subject to RCRA Subtitle C requirements (see subclause (3)(B) below). The Coast Guard must comply with state law disposal requirements, if more stringent.
- (3) Alternatives to Abatement.
  - (a) Approvals. Any alternative to abatement must be approved by Commandant (G-SEC).
  - (b) Demolition. Demolition of structures may be considered as an alternative to abatement. However, demolition debris, unlike abatement debris, is subject to RCRA Subtitle C unless a toxicity characteristic test shows otherwise. For conveyances conducted under the GSA system, GSA's concurrence is required (see 41 C.F.R. § 101-47.503-1(c)).
  - (c) Historic Preservation Interim Controls. If requested by the State Historic Preservation Office (SHPO), interim controls, imposed in accordance with 24 C.F.R. §§ 35.1330 and 35.1355, may be substituted for abatement at properties determined to be eligible for listing in the National Register of Historic Places or contributing to a National Register Historic District (see 24 C.F.R. § 35.115(a)(13)).
  - (d) Abatement By Property Recipient. The HUD regulations allow for property recipients to abate lead hazards in residential structures constructed before 1960 if such activities are concluded prior to further residential occupancy. However, the HUD regulations require the "federal agency" to assure that the recipient carries out the abatement work (a monitoring obligation). GSA considers it the responsibility of the holding agency, *i.e.*, the Coast Guard, to ensure that such a recipient's commitment is fulfilled. Only in unusual circumstances, *e.g.*, Governors Island, will it be advantageous for the Coast Guard to assume responsibility for monitoring the recipient's performance.
- d. Disclosure. The HUD regulations require that recipients of housing containing LBP and/or LBP hazards receive certain general information, including an EPA lead hazard information pamphlet or state equivalent, as well as specific information concerning the LBP and/or LBP hazards present in the subject housing. If GSA is the disposal agency, GSA shall be responsible for transmitting the requisite information to the recipient; the servicing environmental and real property staffs shall ensure that GSA receives all the necessary information to satisfy this requirement. If the Coast Guard is

the disposal agency, then the servicing environmental staff shall ensure compliance with the procedures set forth in subparagraph IV.C.10.b.

### III. DISPOSALS UNDER THE STANDARD, GOVERNMENTWIDE GENERAL SERVICES ADMINISTRATION (GSA) SYSTEM

#### A. Disposal Determination

1. Authority. The GSA real property disposal process was established by the Federal Property and Administrative Services Act of 1949 (FPASA), as amended, 40 U.S.C. §§ 471 *et seq.* GSA has promulgated regulations to implement the disposal provisions of FPASA at 41 C.F.R. Part 101-47. Most of the Coast Guard's actions under this process will consist of reporting to GSA that the subject real property is "excess property" (see Glossary) and as such, is no longer needed by the Department of Transportation. GSA will then attempt to dispose of the property, by either conveying it to a non-Federal entity or transferring to another Federal agency (outside of the Department of Transportation).
2. Policy/Chain of Command Approvals. The Coast Guard shall retain real property only if it has an operational or mission-related need for such property. Under a delegation of authority from Commandant (G-CCS) via Commandant (G-S), the final determination of operational need, and whether the subject real property should be disposed, is made by Commandant (G-SEC) (except for those instances in which a planning proposal is required, in which case Commandant (G-CCS) shall make such final determination, see paragraph III.A.5.). As such, Commandant (G-SEC) approval is a prerequisite to the disposal of any Coast Guard controlled real property. **Until the subject real property is deemed "excess property" (see paragraph III.A.7.), Coast Guard staff shall *not communicate* to any congressional staff, other Federal agency or non-Federal entity or representative thereof, to the general public, or to any private individual, *that the subject real property is excess to the needs of the Coast Guard or Department of Transportation*. In those instances in which a planning proposal is required, the foregoing is not intended to restrict Coast Guard staff from completing any public outreach requirements of NEPA. Any such public outreach must clearly *communicate*, however, that *no official decision* has been made and that it is the practice of the Coast Guard to consider multiple alternatives, as appropriate, and to receive any necessary approvals from higher authority, prior to making any decision.**
  - a. The Commander of the unit concerned shall determine whether the Coast Guard has a continuing operational need for any given real property for which his or her unit is responsible. Once this determination has been made, the unit Commander shall notify the servicing real property staff.
  - b. The unit concerned and the servicing real property staff shall document the rationale for disposal. MLC, District, and Area Commander approvals must be obtained before the documentation is submitted to Commandant (G-SEC), which may include previously approved Area or MLC disposal plans that contain a specific reference to the subject real property. District planning staff tasking letters to servicing real property staffs may be considered District Commander approval. Upon receipt, Commandant (G-SEC) shall forward the documentation provided by the field to the various Headquarters



programs through the concurrent clearance process and if required, seek Office of the Secretary of Transportation (OST) approval.

- c. Commandant (G-SEC) shall attempt to expedite the Headquarters review and approval process. For planning purposes, routine disposal determinations shall probably take no more than 30 days to complete the Headquarters review and approval process. It must be understood, however, that each disposal determination shall be made on a case-by-case basis. If a proposed disposal action is particularly complex, has OST or congressional interest, or if the documentation provided by the field is inadequate, it may take several months before Commandant (G-SEC) can approve of the disposal.
3. Documentation Required. Except for those instances in which a planning proposal is required (see paragraph III.A.5.), the servicing real property staff, in coordination with the unit concerned and the servicing environmental staff, shall document the rationale for disposal. The documentation shall include a draft Standard Form (SF), SF-118, Report of Excess Real Property which describes the subject real property and any related personal property. Although there is no prescribed form for the documentation to be submitted, other than the inclusion of a draft SF-118, the preparation and submission of complete, detailed, and accurate documentation will increase the likelihood of an expedited review at the Headquarters and OST levels. In addition to the information included upon the draft SF-118, the submitted documentation shall identify, describe, or include:
- a. The reasons for disposal (forwarding the tasking letter from the unit concerned may be sufficient if the letter adequately describes the reasons for disposal);
  - b. The cost estimates of the disposal action, to the extent known (*e.g.*, environmental liability costs, protection and maintenance costs, etc.);
  - c. Consideration of any alternatives to disposal (*e.g.*, reassigning the real property to another Coast Guard unit);
  - d. A description of any interests or rights in, to, or associated with the subject real property that will need to be retained by the United States of America, under the administrative control of the Coast Guard, after the subject real property's disposal (*e.g.*, an easement for the operation and maintenance of an aid to navigation, a restriction upon a non-Federal recipient's use of the property, etc.);
  - e. A description of any related personal property, including any historic artifacts, that will remain upon the subject real property and that will need to be retained by the United States of America, under the administrative control of the Coast Guard, after the subject real property's disposal;
  - f. Consideration of environmental requirements, accomplished by the completion of appropriate analyses and documentation in accordance with the NEPA Manual (see paragraph III.A.4. below); and

- g. Photographs and other visual aids, if available.
4. Documentation Required/NEPA. The documentation submitted shall include the results of the proper NEPA analysis. The servicing environmental staff shall prepare the requisite NEPA documentation in accordance with the NEPA Manual. The NEPA analysis should focus on the Coast Guard action of reporting the subject real property as excess property to GSA and any connected action(s), such as redeployment of assets from the property to other sites, as well as any contemplated alternatives to reporting the property excess. Where the disposal action is part of a larger action, such as building replacement or unit relocation, the NEPA analysis of the larger action should include analysis of the real property disposal action. The NEPA analysis should not focus on the ultimate disposal action, which would either be the conveyance of the property to a non-Federal entity or the transfer of administrative control over the property to another Federal agency—GSA is responsible for conducting that NEPA analysis.
- a. Categorical Exclusion. If the only action contemplated is reporting the property excess to GSA, and if the reporting action is not an integral part of a larger proposed action or series of actions, a NEPA categorical exclusion (CE) may apply. A CE is a category of actions that do not normally result in significant impacts, or the potential for significant impacts, to the environment or human health, as determined by Commandant (G-SEC). As such, the more complex and rigorous levels of NEPA analysis, an Environmental Assessment (EA) and, in ascending order, the Environmental Impact Statement (EIS), are not normally required. Specifically, CE #15 covers reporting real property excess to GSA (NEPA Manual, figure 2-1). CE #15 requires completion of an environmental checklist (NEPA Manual, enclosure (2)) and a Categorical Exclusion Determination (CED) (NEPA Manual, enclosure (3)). **If the environmental checklist, however, indicates that there is the potential for any significant impacts to the environment or human health, then preparation of either the EA or the EIS will be necessary.**
5. Documentation Required/Planning Proposal. Certain proposed disposal actions, described in subparagraphs III.A.5.a.-b. below, require the preparation and submission of a planning proposal in accordance with the Planning and Programming Manual – Volume II, COMDTINST M16010.6(series). The servicing shore facility planning staff, in coordination with the unit concerned, shall prepare the planning proposal and Commandant (G-CCS) shall be the approving authority. The requirements described in subparagraphs III.A.3.a.-g. and paragraph III.A.4. above shall be included within the planning proposal.
- a. Part of Acquisition Transaction. The preparation and submission of a planning proposal is required if the proposed disposal action is one part of a larger transaction or series of transactions that involve the Coast Guard acquisition of other real property. One planning proposal covering all of the components of the transaction is sufficient.
- b. Small Boat Stations. Section 309(a) of the Coast Guard Authorization Act of 1996 (codified at 14 U.S.C. § 674), requires the Secretary of Transportation to make certain

findings and to provide an opportunity for public comment before a small boat station or subunit can be closed. The Secretary has delegated this authority to the Commandant (G-C), see 49 C.F.R. § 1.46(iii). If the subject real property contains a small boat station or subunit, the unit concerned shall provide an opportunity for public comment and for a public meeting in the area of the station or subunit with regard to the decision to close the station or subunit. The planning proposal analysis shall consider and assess the public comments. Also, the following criteria must be satisfied, and documented in the planning proposal, before the Coast Guard can close the station or subunit, and report the subject real property to GSA:

- (1) That remaining search and rescue (SAR) capabilities maintain the safety of the maritime public in the area of the station or subunit;
- (2) That regional or local prevailing weather and marine conditions, including water temperature or unusual tide and current conditions, do not require continued operation of the station or subunit; and
- (3) That Coast Guard SAR standards related to SAR response times are met.

6. Reassignment or Approval By OST. Once the disposal action is approved by Commandant (G-SEC) or Commandant (G-CCS), as appropriate, Commandant (G-SEC) will advise the Assistant Secretary for Administration, OST (Assistant Secretary), of the disposal action via the Transportation Administrative Service Center (TASC).
  - a. Reassignment. The Assistant Secretary will then have the opportunity to reassign the subject real property to the administrative control of another modal administration within the Department of Transportation (DOT) (see subsection III.B.).
  - b. OST Approval. In addition to providing OST with the opportunity to reassign the subject real property, Commandant (G-SEC) must seek approval for the disposal action from the Assistant Secretary if the proposed disposal meets or exceeds the criteria identified in DOT Order 4300.2 (attached as enclosure (2) to chapter 2).
7. Report of Excess. Upon being notified that no other DOT modal administration has a need for the subject real property and after obtaining any required OST approval or determination, the subject real property shall be deemed “excess real property” (see Glossary). At this point, Commandant (G-SEC) will direct the servicing real property to prepare a report of excess and submit the same to the proper GSA regional office (see subsection III.C.). The report of excess, a report required by GSA regulations, serves as the Department of Transportation’s notification to GSA that it no longer has a need for the subject real property.
8. Holding Agency/Disposal Agency. The Coast Guard shall remain responsible for the administrative accountability, control, and custody of the property pending its disposal by GSA. As such, the subject real property is not, in any way, transferred to GSA via the report of excess. In accordance with FPASA, GSA is responsible for the ultimate disposal

of the property, either by transfer to another Federal agency (the property's legal title remains with the United States), or by sale or conveyance to a non-Federal entity (the property's legal title transfers to the non-Federal entity). Under GSA regulations, the Coast Guard is the "holding agency" and GSA is the "disposal agency" (see 41 C.F.R. §§ 101-47.103-6, 101-47.103-7, and 101-47.302).

9. Environmental Remediation/Abatement. If the subject real property is conveyed to a non-Federal entity, the Coast Guard will have to satisfy various remediation and abatement requirements before the property may be conveyed (see paragraph III.D.4.).
10. Public Domain Lands. Lands withdrawn from the public domain for Coast Guard use, that are no longer needed by the Coast Guard, shall be reported initially to the Bureau of Land Management (BLM), Department of Interior (see subsection III.G.).
11. Lighthouse Disposals. Historic lighthouse properties are disposed of in accordance with the National Historic Lighthouse Preservation Act of 2000 (see subsection III.H.).

#### **B. Reassignment or Approval by Office of Secretary of Transportation**

1. Office of Secretary of Transportation (OST) Reassignment. Upon Commandant (G-SEC) or Commandant (G-CCS) approval, as appropriate, of the disposal action, Commandant (G-SEC) will inform the Assistant Secretary for Administration, OST, via TASC, of the availability of the subject real property for use by other DOT modal administrations (except for lands withdrawn from the public domain, see paragraph III.B.4.). If OST determines that another DOT modal administration has a need for the real property, OST will reassign the property, typically by a letter executed by a duly authorized OST official, thereby transferring administrative control, custody, and accountability of that property to the other modal administration. As legal title to the subject real property remains with the United States of America, no deed preparation is required. The authority for any such reassignment action is the FPASA (40 U.S.C. § 483). A reassignment by OST to another DOT modal administration will take precedence over reporting the subject real property to GSA.
2. Reassignment by OST/Property Files. If OST elects to reassign the subject real property to another DOT modal administration, the servicing real property staff shall transmit the property files to the other modal administration within 60 days of the effective date of the reassignment. The servicing real property staff shall retain a copy of the files and notify the Coast Guard Finance Center (FINCEN) of the reassignment.
3. OST Approval of Disposal. Concurrently with OST consideration of any reassignment of the subject real property to another DOT modal administration, Commandant (G-SEC) will seek approval for the disposal action from OST if the proposed disposal meets or exceeds the criteria identified in DOT Order 4300.2 (attached as enclosure (2) to Chapter 2).
4. Public Domain Lands. Lands withdrawn from the public domain are withdrawn for a specific Coast Guard use, and as such, are not available for reassignment within DOT.

Commandant (G-SEC), however, must still seek OST approval if the disposal action meets or exceeds the criteria identified in DOT Order 4300.2.

### **C. Preparation and Submission of the Report of Excess**

1. **General.** GSA regulations, 41 C.F.R. § 101-47.202, require the preparation and submission of a report of excess. The purpose of the report of excess is to notify GSA that neither the Coast Guard nor any other modal administration of DOT has any further need for the subject real property. GSA acceptance of the report of excess does **not** result in a transfer of administrative control, custody, and accountability over the subject real property to GSA. The Coast Guard remains the holding agency and as such, continues to have administrative control, custody, and accountability over the property until GSA either conveys the property to a non-Federal entity or transfers administrative control to another Federal agency.
2. **Determination of Excess.** Pursuant to FPASA (40 U.S.C. § 472(e)), the subject real property shall become excess upon the completion of the following sequence:
  - a. The approval of the disposal action by Commandant (G-SEC) or (G-CCS), as appropriate;
  - b. Notification by OST that there is no interest in the subject real property by another DOT modal administration; and
  - c. OST approval, if required, for the disposal action per DOT Order 4300.2.
3. **Commandant (G-SEC) Notification.** Upon receipt of the approvals and notification identified in paragraph III.C.2 above, Commandant (G-SEC) will direct the servicing real property staff to prepare and submit the report of excess. The servicing environmental staff shall assist the real property staff as appropriate.
4. **Reassignment by OST.** A report of excess shall not be required if the subject real property will be reassigned by OST to another DOT modal administration.
5. **Public Domain Lands.** A report of excess is not required for lands withdrawn from the public domain. Such property is reported to the Bureau of Land Management (BLM), Department of Interior. A report of withdrawn public domain lands to BLM is prepared in accordance with the requirements of 43 C.F.R. § 2372.1 (see subsection III.G.). If BLM determines, however, that the reported withdrawn lands are not suitable for return to the public domain, then the servicing real property staff must prepare and submit a report of excess to GSA.
6. **Personal Property.** Excess personal property, except for related personal property, is disposed of in accordance with the Property Management Manual, COMDTINST M4500.5(series) (for definitions of “personal property” and “related personal property,” see Appendix A). As such, only related personal property is listed on the SF-118.

- a. Coordination with Commandant (G-CFM-3). The servicing real property staff shall coordinate with the unit concerned and Commandant (G-CFM-3) to ensure that all personal property located on the subject real property is either reassigned to other Coast Guard units or is otherwise disposed in accordance with the Property Management Manual, prior to the disposal of the subject real property.
  - b. Historical Artifacts. The disposal of historical artifacts located upon the subject real property, or the reassignment of such artifacts to other Coast Guard units, will be subject to any applicable requirements of the National Historic Preservation Act, 16 U.S.C. §§ 470 *et seq.* See paragraph III.H.7. for procedures concerning historic artifacts located at or associated with lighthouse properties.
7. Preparation of Report of Excess—SF-118. The report of excess shall include preparation of the Standard Form 118, Report of Excess Real Property (SF-118) and its accompanying schedules: SF-118a (improvements), SF-118b (land), and SF-118c (related personal property). In addition, the report of excess shall include the findings and documentation generated as a result of satisfying the requirements listed in paragraphs III.C.8.-22. below. Once the report of excess has been prepared, the servicing real property staff shall submit the report to the appropriate GSA regional office.
8. Report of Excess Requirements—Real Property. In addition to the preparation of the SF-118, the following is a description of the report and document requirements, to be prepared by the servicing real property staff, in coordination with the unit concerned:
- a. A description of the property (provide legal description—metes and bounds survey, block and lot number, etc., if available; otherwise, provide geographic or other description);
  - b. A description of any interests or rights in, to, or associated with the subject real property that will need to be retained by the United States of America, under the administrative control of the Coast Guard, after the subject real property's disposal (*e.g.*, an easement for the operation and maintenance of an aid to navigation, a restriction upon a non-Federal recipient's use of the property, etc.);
  - c. Identification and description of any related personal property attached to or otherwise located upon the subject real property, including but not limited to those:
    - (1) That have or may have historic or artistic value; or
    - (2) That will need to be retained by the United States of America, under the administrative control of the Coast Guard, after the subject real property's disposal;
  - d. The date title to the property vested in the United States of America;

- e. Identification and description of all encumbrances, exceptions, reservations, conditions, and restrictions, relating to the property's title;
  - f. Detailed information concerning any action, thing, or circumstance that occurred from the date of the property's acquisition by the United States to the date of the report of excess which affected or may have affected the right, title, and interest of the United States in and to the property (in the absence of any such action, thing, or circumstance, a statement to that effect shall be made a part of the report);
  - g. The status of civil and criminal jurisdiction over the land (*i.e.*, proprietary, concurrent (both Federal and state), or exclusive Federal);
  - h. A legible, reproducible copy of all instruments in possession of the Coast Guard which affect the right, title, or interest of the United States in the subject real property (*e.g.*, the deed by which the United States acquired the real property, any grants of easement interests, outleases, or other interests in favor of a non-Federal party that burden or encumber the subject real property);
  - i. Any appraisal reports in the possession of the Coast Guard which indicate the fair market value or the fair annual rental value of the subject real property; and
  - j. A certification that states "This property has been screened against the known needs of the Department of Transportation" (the TASC notification that there is no interest in the subject real property among any other DOT modal administrations shall serve as the basis for this certification, see subsection III.B.).
9. Report of Excess Requirements—Environmental/General. The servicing environmental staff shall document, determine or otherwise satisfy the environmental and historic preservation requirements set forth in paragraphs III.C.10-C.22. Upon satisfaction of these requirements, the servicing environmental staff will forward its findings, a copy of the contamination survey report, and if applicable, the results of any confirmation sampling, and any other necessary documentation to the servicing real property staff for inclusion within the report of excess.
- a. Remediation. The Coast Guard must plan on remediating any environmental contamination before GSA conveys the subject real property to a non-Federal entity (see subsection II.C.). Such remediation is not required to be completed before the report of excess is submitted to GSA.
  - b. Connected Actions. The determination that the subject real property is excess to the needs of the Department of Transportation may set in motion other discrete actions such as a reduction in the property's maintenance levels, the transfer of personnel or personal property to other sites, etc. Planning or initiating these connected actions may require further Coast Guard compliance with NEPA, the NHPA, the CZMA, and other applicable environmental laws, regulations, and executive orders. The unit concerned

and the servicing real property staff shall consult with the servicing environmental staff as appropriate.

10. NEPA Documentation. The NEPA documentation prepared in conjunction with the documentation forwarded to Commandant (G-SEC) (see paragraph III.A.4.) shall be attached to the report of excess (*i.e.*, categorical exclusion determination, environmental assessment with finding of no significant impact, or environmental impact statement and record of decision).
11. CERCLA Hazardous Substance Activity. Based upon the contamination survey report and, if applicable, the results of any confirmation sampling (see subsection II.B.), the report of excess shall indicate:
  - a. Whether the subject real property or any portion thereof is proposed for or listed on the National Priorities List of Superfund sites; and
  - b. Whether, during the time the United States owned the subject real property (includes periods of time when other Federal agencies controlled the property), any hazardous substance, as that term is defined by Environmental Protection Agency (EPA) regulations at 40 C.F.R. Part 373, was stored for one year or more, known to have been released, or disposed of on the property.
12. CERCLA Hazardous Substance Activity/Required Statements. If a hazardous substance was stored for one year or more, known to have been released, or disposed of on the property, then the report of excess shall describe the type and quantity of such hazardous substance and the time at which such storage, release, or disposal took place. In addition to the above description, the report of excess shall include ***one*** of the following statements:
  - a. All remedial action necessary to protect human health and the environment has taken place before the date the Coast Guard submitted the report of excess to GSA;
  - b. All remedial action is in place and has been demonstrated to EPA that it is operating “properly and successfully” (see paragraph II.C.3.); or
  - c. If such remedial action has not taken place, a statement estimating when it will be completed and what is being done to ensure that the remediation will be completed.
13. CERCLA Compliance/No Hazardous Substance Activity. If ***no*** hazardous substance was stored for one year or more, known to have been released, or disposed of on the subject real property, then the following statement must be attached to or otherwise incorporated within the report of excess:

“The Coast Guard has determined, in accordance with regulations issued by the U. S. Environmental Protection Agency at 40 C.F.R. Part 373, based on a complete search of agency files, that there is



no evidence to indicate that a hazardous substance was stored for one year or more, known to have been released, or disposed of on the property during the time the property was owned by the United States.”

14. Asbestos Containing Materials (ACM). The report of excess shall include a description of the type, location and condition of any asbestos incorporated in the construction, repair, or alteration of any building or improvement on the subject real property (*e.g.*, fireproofing, pipe insulation, etc.) and a description of any asbestos control measures taken for the subject real property. While GSA does not require abatement of ACM, GSA does request any available information regarding the cost or time necessary to remove the ACM. If *damaged* friable ACM exists in the structure, see paragraph II.D.2.
15. Lead-Based Paint (LBP). In general, the report of excess shall list all structures constructed or renovated before 1978. If known, the report shall indicate where LBP is located (on or in the structures). Additional LBP requirements for specific situations are as follows:
  - a. Exterior LBP. If there is exterior lead contamination, then the servicing environmental staff must provide the appropriate CERCLA documentation as described in paragraphs III.C.11.-12. (see also paragraph II.E.1.).
  - b. Interior LBP in Structures Other Than Coast Guard Controlled Housing. See paragraphs II.E.2.-3.
  - c. Interior LBP in Coast Guard Controlled Housing. For properties with housing, see paragraphs II.E.4.-5. to determine if the HUD regulations apply. If the HUD regulations apply, or if state law imposes more stringent requirements (see subparagraph II.E.6.a.), then the procedures set forth in subparagraphs III.C.15.d.-e. shall be followed. See also enclosure (3), entitled “LBP Flowchart 3.”
  - d. LBP Inspection and Risk Assessment. Provide GSA with a copy of the results of the most recent LBP inspection or risk assessment of the subject real property conducted prior to the initiation of the disposal process. Do not conduct a LBP inspection or risk assessment **until and unless** GSA determines the subject real property to be surplus property (see subsection III.D.), if these actions were not performed prior to the initiation of the disposal process. If the subject real property is transferred to another Federal entity, neither a LBP inspection nor a risk assessment is required. If GSA intends to convey the subject real property to a non-Federal entity, then both a LBP inspection **and** a risk assessment are required and must be completed by the Coast Guard and the results provided to GSA before the conveyance of the property. See subparagraphs II.E.6.a.-b. for LBP inspection and risk assessment requirements.
  - e. LBP Abatement. If LBP hazards on the subject real property were abated prior to the initiation of the disposal process, provide GSA with a copy of all abatement reports or provide a description of the abatement work and the results. In the documentation,

- indicate the results of the clearance test(s). Do not perform abatement work on the subject residential property **until and unless** GSA determines the property to be “surplus property” (see subsection III.D.), if such work was not commenced prior to the initiation of the disposal process. If the subject real property is being transferred to another Federal entity, there is no abatement requirement. If GSA intends to convey the subject real property to a non-Federal entity, then the required lead hazard abatement must be completed (including the passing of a clearance test) by the Coast Guard before the conveyance of the property. See subparagraphs II.E.6.a. and c. for substantive LBP abatement requirements. Upon completion of the abatement work, provide GSA with a copy of all abatement reports or provide a description of the abatement work and the results, including the results of the clearance test(s).
16. Underground Storage Tanks (USTs). The report of excess shall state, for any UST currently or formerly located on the subject real property, the UST’s location, capacity, level of compliance with EPA and state regulations, whether the UST is in use, and the past or current substances stored in the UST. With respect to the level of compliance, the report of excess will indicate whether the USTs have been maintained and are currently in compliance with the applicable state or EPA regulations (40 C.F.R. Part 280), or if not, the expected date that such USTs will be in compliance.
  17. Polychlorinated Biphenyl (PCB) Transformers or Other Equipment. Pursuant to 40 C.F.R. § 101-47.202-2(c)(3), a certification that the subject real property does or does not contain PCB transformers or other equipment regulated by the EPA under 40 C.F.R. Part 761. If such equipment is located on the property, the certification must include an assurance that each item of such equipment is presently, and will continue to be, maintained in a state of compliance with 40 C.F.R. Part 761 until the property is transferred from the Coast Guard’s administrative control (either by GSA’s transfer to another Federal agency or by conveyance of the property to a non-Federal entity). In addition, the certification must include an inventory of all PCB-containing equipment.
  18. Floodplains. Detailed information about any known flood hazards or flooding of the subject real property, and if all or part of the property is located in a floodplain, a listing of and citation to those uses that are restricted under applicable Federal, State, or local regulations as required by Executive Order (E.O.) 11988 of 24 May 1977 (Flood Plain Management), 42 Fed. Reg. 26951, as amended by E.O. 12148, 44 Fed. Reg. 43239. Within the Department of Transportation (DOT), the above executive orders are implemented by DOT Order 5650.2 of 23 April 1979.
  19. Wetlands. Detailed information about any known wetlands including any permits or certified wetland delineations, and a listing of citations to relevant requirements under applicable Federal, State, or local regulations as required by E.O. 11990 of 24 May 1977 (Protection of Wetlands), 42 Fed. Reg. 26961, as amended by E.O. 12608 of 9 September 1987, § 28, 52 Fed. Reg. 34617. Within the DOT, the above executive orders are implemented by DOT Order 5660.1a of 24 August 1978.

20. Coastal Zone Management Act. Identify any coastal zone management areas located on or adjacent to the subject real property, and provide any available information regarding the state coastal zone management programs for those areas.
21. Endangered Species Act. Identify the presence, or likely presence, of endangered or threatened species, if any, on or adjacent to the subject real property. Consultation with the requisite field office of the Fish and Wildlife Service, Department of the Interior or the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, may be required to determine the presence, or likely presence, of endangered or threatened species.
22. Historic Preservation. Describe the historical significance of the subject real property, if any, and whether the property is listed, is eligible for, or has been nominated for listing in the NRHP or is in proximity to a property on the NRHP (see subparagraph II.A.3.a.). In addition, any ongoing effort to have the property listed on the NRHP should be described. Consultation with the requisite SHPO or THPO may be required to determine the historic significance of the subject real property, if the significance is unknown.
23. Submission. Once prepared, the servicing real property staff shall submit the report of excess to the appropriate GSA regional office.
24. GSA Notification of Receipt. GSA shall notify the Coast Guard when it receives the report of excess. The receipt date is significant, as it will determine the date when GSA begins to pay the protection and maintenance expenses associated with the excess subject real property.
25. GSA Acceptance of Report of Excess. Within 15 calendar days after receipt of a report of excess, GSA will inform the Coast Guard by letter that GSA has either accepted the report or has determined that the report is insufficient. GSA's acceptance of the report will be based upon the extent that GSA can use the information and the findings provided by the report to proceed with utilization and disposal actions for the subject real property. If GSA finds the report to be insufficient, to the extent that GSA would be unable to proceed with any utilization or disposal actions for the subject real property, GSA will return the report to the Coast Guard with a description of the report's deficiencies. The Coast Guard will then have an opportunity to correct and resubmit the report. Any delay caused by the report's insufficiency may extend the period for which the Coast Guard will be responsible for protection and maintenance expenses and as such, delay the date that GSA will begin to defray such expenses from its own appropriation. The applicable GSA regulations are set forth at 41 C.F.R. §§ 101-47.202-8—101-47.202-10.
26. Withdrawals. Subject to GSA's approval, the Coast Guard may withdraw a report of excess, for either the entire subject real property or a portion thereof, at any time prior to the property's transfer to another Federal agency or prior to the execution of a legally binding agreement to convey the subject real property to a non-Federal entity (see 41

C.F.R. § 101-47.203-10). Any request to withdraw a submitted report of excess shall be made to the servicing real property staff. The servicing real property staff will forward this request to Commandant (G-SEC) for approval. Commandant (G-SEC) will coordinate the withdrawal request, as appropriate, with the program offices at Headquarters. If approved, Commandant (G-SEC) will direct the servicing real property staff to forward the withdrawal request to the appropriate regional office of GSA.

**D. GSA Screening of Excess Real Property, Surplus Determination, and Disposal**

1. GSA Screening of Excess Real Property. Following GSA acceptance of the report of excess, GSA will screen the subject real property for use by other Federal agencies. If another Federal need for the subject real property is identified in the screening process, GSA will transfer the property to the Federal agency in question. Upon GSA's transfer of the subject real property, administrative control, custody, and accountability for the subject real property will pass from the Coast Guard to the other Federal agency. The title to the subject real property, however, will remain with the United States of America. As such, there will be no need to prepare a deed or other conveyance documentation.
2. Transfer of Excess Real Property To Another Federal Agency. In the event of a transfer to another Federal agency, the Coast Guard, per the applicable GSA regulations (41 C.F.R. § 101-47.203-7(h)), shall be responsible for providing the transferee agency with a copy of the contamination survey report and if applicable, the results of any confirmation sampling, and any statements prepared in accordance with paragraphs III.C.11.-12. No other action is required by the Coast Guard in regard to the screening of the subject real property or to the transfer of the administrative control of the property to another Federal agency.
3. GSA Surplus Determination and Disposal. If GSA does not identify any further Federal need for the subject real property, GSA will then determine the property to be "surplus property" as that term is defined according to FPASA, 40 U.S.C. § 472(g). GSA will then attempt to dispose of the subject real property, either at no or reduced cost through a public benefit conveyance, or through an advertised or negotiated disposal, at fair market value. GSA will be responsible for the disposal action, including the preparation, execution, and delivery of the deed and any other conveyance documentation. If GSA disposes of the subject real property to a non-Federal entity, the property's title will transfer from the United States of America to the non-Federal entity. The Coast Guard has no active role in the GSA surplus property disposal process other than that identified in this chapter.
4. Environmental Remediation/Abatement. If the subject real property is to be conveyed to a non-Federal entity, the Coast Guard must satisfy the following remediation and abatement requirements before GSA can convey the property:

- a. CERCLA hazardous substance contamination shall be remediated by the Coast Guard as necessary to protect human health and the environment in accordance with subsection II.C. and paragraphs II.D.1. and II.E.1.;
  - b. Damaged friable ACM shall be abated in accordance with paragraph II.D.2.; and
  - c. LBP hazards in Coast Guard controlled housing shall be abated in accordance with subparagraph II.E.6.c.
5. Closing Property File/Notification of Finance Center (FINCEN). The servicing real property staff shall ensure that GSA provides written notification to the Coast Guard of the transfer the subject real property to another Federal entity or, in the case of a the property being determined surplus and conveyed to a non-Federal entity, a copy of the executed, recorded deed (bearing the clerk's stamps and recording office's deed book and page numbers). Upon receipt, the servicing real property staff shall file the written notification or copy of the deed, remove the subject real property from the Coast Guard's inventory, and notify the FINCEN of the completed disposal.
  6. Proceeds. Unless otherwise authorized by law, any proceeds from the sale of Coast Guard controlled surplus real property by GSA will be deposited into the land and water conservation fund in the United States Treasury (see 41 CFR § 101-47.307-6).

#### **E. Protection and Maintenance of Excess and Surplus Real Property**

1. General. Upon GSA acceptance of the report of excess, GSA becomes responsible for disposing of the subject real property by either transferring it to another Federal agency or if no further Federal need for the property is identified, by conveying it to a non-Federal entity. If GSA determines that there is no further Federal need for the property, it will be deemed to be "surplus property." The Coast Guard retains administrative control, custody, and accountability of the subject real property (whether excess or surplus property), and shall be responsible for the subject real property's protection and maintenance (except as explained in paragraph III.E.2. below) pending its transfer to another Federal agency or disposal to a non-Federal entity.
2. Protection and Maintenance Expenses. Under GSA regulations, the Coast Guard will initially be responsible for the expenses of protection and maintenance for a set period of time after which GSA will pay directly, or reimburse the Coast Guard, the expenses of protection and maintenance. Protection and maintenance expenses will be paid from OE funds.
  - a. GSA Notification. The GSA notice of its receipt of the report of excess will determine the date that GSA will pay directly, or reimburse the Coast Guard, the expenses of protection and maintenance, or alternatively, GSA will indicate that such date is not determinable because of insufficiencies in the report of excess.

- b. Period of Coast Guard Responsibility for Protection and Maintenance Expenses. Per the applicable GSA regulations, 41 C.F.R. § 101-47.402, the Coast Guard shall remain responsible for the expenses of protection and maintenance of the subject real property pending disposal for not more than 12 months, plus the period to the first day of the succeeding quarter of the fiscal year after the date that the property is available for immediate disposition (approximately 15 months). The date that the property is available for immediate disposition shall normally be the date that GSA received the report of excess, unless GSA deemed the report of excess insufficient (see 41 C.F.R. §§ 101-47.202-9-101-47.202-10). Under such circumstances, the date that the property is available for immediate disposition would then shift to the date that GSA determined the report of excess to be sufficient (*i.e.*, the date that GSA determines it has sufficient information to proceed with utilization and disposal actions for the subject real property).
- c. GSA Responsibility for Protection and Maintenance Expenses. Following the period of Coast Guard responsibility for protection and maintenance expenses, GSA will become responsible for such expenses (see 41 C.F.R. § 101-47.402-2(b)). At GSA's discretion, the protection and maintenance expenses will either be paid directly by GSA or by reimbursement to the Coast Guard. Specifically:
- (1) GSA and Coast Guard will enter into a written agreement (*e.g.*, a memorandum of agreement) specifying the maximum amount of such protection and maintenance expenses.
  - (2) GSA's obligation to pay or reimburse the protection and maintenance expenses are subject to the availability of funds (*i.e.*, subject to the appropriation by Congress of funds sufficient for such purpose); in this regard, GSA will only execute an obligational document (*e.g.*, a reimbursable agreement) with the Coast Guard if and when Congress actually appropriates to GSA sufficient funds.
  - (3) In the absence of the written agreement described above or if GSA does not receive sufficient funding from Congress, the Coast Guard will remain responsible for the protection and maintenance expenses, without any right of contribution or reimbursement from GSA.
3. Protection and Maintenance Responsibilities. Although GSA may pay or reimburse the protection and maintenance expenses after the period described in subparagraph III.E.2.b. above, the ultimate responsibility for conducting the actual protection and maintenance remains with the Coast Guard (specifically, the unit concerned) until the subject real property is transferred to another Federal agency or disposed by conveyance to a non-Federal entity. The servicing real property staff shall assist the unit concerned in its protection and maintenance responsibilities. Guidelines for protection and maintenance of excess and surplus real property, including the safeguarding of the public from any conditions upon the property, are set forth in GSA regulations at 41 C.F.R. § 101-47.4913. In particular, the unit concerned should secure the subject real property in a manner that will prevent access by, and possible injury to, children and curiosity seekers. Further, the

unit concerned shall provide adequate safeguards for or otherwise render innocuous any dangerous conditions upon the subject real property (*e.g.*, posting warning signs, erecting fences, turning off electrical power, removing certain personal property that may be dangerous, etc.).

4. Assistance in Disposition. The unit concerned and the servicing real property staff shall cooperate with GSA in showing the subject real property to prospective transferee Federal agencies, purchasers, or other prospective recipients. Per the applicable GSA regulation (41 C.F.R. § 101-47.403), the Coast Guard shall absorb the entire cost of showing the subject real property unless extraordinary expenses are incurred.

#### **F. Interim Use of Coast Guard Controlled Excess and Surplus Real Property**

1. General. It is the policy of GSA to place excess and surplus real property in productive use through interim Federal or non-Federal use pending the subject real property's transfer or disposal, provided that such use will not interfere with or delay its transfer to a Federal agency or disposition to a non-Federal entity (41 C.F.R. § 101-47.401-1(b)).
2. Federal Interim Use. GSA may temporarily assign excess and surplus Coast Guard controlled real property to other Federal agencies if GSA determines that such assignment is in the "best interest of the Government." The servicing real property staff shall forward any requests from other Federal agencies to use excess and surplus Coast Guard controlled real property to the appropriate GSA regional office.
3. Non-Federal Interim Use. The Coast Guard, as the holding agency, may make excess and surplus Coast Guard controlled real property available on a temporary basis for non-Federal interim use. Under GSA regulations, any Federal interim use will take precedence over any non-Federal interim use (see 41 C.F.R. § 47.203-9). Thus, any non-Federal interim use is only permitted to the extent that it does not interfere with any Federal interim use. The servicing real property staff must obtain the approval of the appropriate GSA regional office before granting the non-Federal interim use. The granting of permission for non-Federal interim use shall be, depending upon the circumstances, either a short-term lease or a revocable real property license.

#### **G. Disposal of Withdrawn Public Domain Lands**

1. General. Withdrawn public domain lands no longer needed by the Coast Guard shall be reported to the Bureau of Land Management (BLM), Department of the Interior, the Federal agency that manages the public lands. The report is known as a notice of intention to relinquish (NOIR). BLM regulations are set forth at 43 C.F.R. Part 2370. After receiving the NOIR, BLM will determine whether the property is suitable to be returned to the public domain. If BLM determines that the subject real property is suitable for return, then BLM will assume full administrative responsibility for the property and the Coast Guard's responsibilities will be discharged. If, however, BLM determines that the subject real property is unsuitable for return to the public domain, the Coast Guard will then be

required to report the property as excess to GSA. In effect, if deemed unsuitable for return, the BLM process closes, and the disposal action is placed back within the GSA system.

2. Disposal Determination. For withdrawn public domain lands, documentation requirements are satisfied and disposals determinations are made in accordance with subsection III.A. and III.B. of this Chapter, except that the submission of a draft SF-118 is not required (although it is recommended in those instances in which it is likely that BLM will determine the property to be unsuitable for return to the public domain).
3. Preparation of NOIR. Upon receipt of all required approvals, Commandant (G-SEC) will direct the servicing real property staff to prepare and submit the NOIR. As indicated below, the servicing environmental staff shall assist the servicing real property staff in preparing the NOIR. The NOIR does not require any specific form, however, the following information shall be included:
  - a. Name and address of the servicing real property staff;
  - b. Citation of the order that withdrew or reserved the lands for the Coast Guard's use;
  - c. Legal description and acreage of the lands, except where reference to the order of withdrawal or reservation is sufficient to identify them;
  - d. Description of any existing improvements;
  - e. The extent to which the lands are contaminated and the nature of the contamination (to be determined by the servicing environmental staff);
  - f. The extent to which the lands have been remediated or the measures taken to protect the public from the contamination and the proposals of the holding agency to maintain protective measures (to be prepared by the servicing environmental staff);
  - g. The extent to which the lands have been changed in character other than by construction of improvements;
  - h. The extent to which the lands or resources thereon have been disturbed and the measures taken or proposed to be taken to recondition the lands;
  - i. If improvements on the lands have been abandoned, a certification that the Coast Guard has exhausted GSA procedures for their disposal and that the improvements are without value;
  - j. A description of the easements or other rights and privileges granted by either the Coast Guard or other preceding holding agencies (to the extent shown or indicated by the Coast Guard's property records);



- k. A list of terms and conditions, if any, that the Coast Guard deems necessary to be incorporated in any further disposition of the lands in order to protect any Federal (including any Coast Guard) interests;
  - l. Any information relating to the interest of other Federal agencies, non-Federal entities, or individuals in acquiring use of or title to the property or any portion of it; and
  - m. Recommendations as to the further disposition of the lands, including where appropriate, disposition by GSA.
4. Submission of NOIR. Once prepared, the servicing real property staff shall submit the NOIR to the appropriate BLM office (see 43 C.F.R. Subpart 1821 for the list of BLM offices and their addresses). A copy of the NOIR shall also be submitted to the appropriate regional GSA office.
  5. BLM Determination. BLM will determine whether the subject real property is suitable for return to the public domain. BLM's determination will be based on the factors listed in 43 C.F.R. § 2374.2, including
    - a. Whether the subject real property has been contaminated, and if so, whether the Coast Guard has successfully remediated the property; and
    - b. Whether the Coast Guard has undertaken or agreed to undertake land treatment measures to prevent deterioration of the land and resources.
  6. BLM Determines Property Suitable. If BLM determines that the subject real property is suitable for return to the public domain, BLM will send a written notice to the servicing real property staff, and a copy to GSA, that the Department of the Interior will accept administrative control over the property. The written notice should provide guidance as to any final procedures for the transfer of administrative control. Upon transfer of administrative control to BLM, the subject real property will be considered returned to the public domain. Other than any prior commitments the Coast Guard may have made to BLM per 43 C.F.R. § 2374.2 (*e.g.*, agreement to undertake land treatment measures), all Coast Guard responsibilities for the property are then considered discharged. The servicing real property staff should then remove the subject real property from the Coast Guard's inventory and inform the FINCEN of the completed disposal action.
  7. BLM Determines Property Not Suitable. If BLM determines that the subject real property is not suitable for return to the public domain, because the lands are substantially changed in character by improvements or otherwise, BLM will direct the Coast Guard to report the subject real property as excess to GSA per the FPASA. Upon receipt of BLM's determination that the property is not suitable, the BLM process will close, and the subject real property will be disposed of in accordance with the GSA system. At this point, the servicing real property staff will prepare and submit a report of excess to the appropriate regional GSA office in accordance with subsection III.C. Upon GSA's acceptance of the

report of excess, the disposal process will then proceed in accordance with subsections III.D.-III.F.

8. Protection and Maintenance. The Coast Guard will remain responsible for the protection and maintenance of the subject real property until BLM determines the property suitable for return to the public domain and BLM accepts administrative control over the property. The scope of the Coast Guard's protection and maintenance responsibilities for withdrawn public domain land pending a BLM determination are set forth in paragraph III.E.3. If BLM determines the property unsuitable, the responsibility for protection and maintenance will be determined in accordance with subsection III.E.
9. Environmental Requirements. The requirements of section II shall apply to disposals of withdrawn public domain land.

#### **H. Disposal of Historic Lighthouse Properties**

1. General. Historic lighthouse properties which are no longer needed by the Coast Guard are disposed of under the authority of the National Historic Lighthouse Preservation Act of 2000, Public Law 106-355 (NHLPA) (except for those located upon land that is determined to be suitable for return to the public domain, see subparagraph III.H.1.a. below). Per the provisions of the NHLPA, historic lighthouse properties are those properties that are either included in, or eligible for inclusion in, the National Register of Historic Places. The disposal process of the NHLPA is premised, in part, upon the GSA system authorized by FPASA. Therefore, the procedures set forth in subsection III.A.-III.C. of this Chapter apply to disposals of lighthouse properties. In addition, the NHLPA requires GSA and the Department of the Interior (DOI) to develop policies and procedures for implementing the NHLPA. This subsection will be expanded further as these policies and procedures are promulgated.
  - a. Lighthouses Located Upon Public Domain Lands. Coast Guard controlled lighthouses located upon public domain lands must first be reported to BLM in accordance with the procedures set forth in subsection III.G. If BLM determines that the subject lighthouse property is not suitable for return to the public domain, the lighthouse property shall be reported to GSA for disposal under the NHLPA.
2. Selection of the Eligible Entity. Upon GSA's acceptance of the report of excess for a historic lighthouse property, the NHLPA requires DOI to select an "eligible entity" to which GSA will convey the property. An eligible entity can be either another Federal agency, or a state or local government, or a nonprofit organization, which meets certain criteria (*e.g.*, financial ability to maintain the property in accordance with DOI standards). The provisions of the NHLPA provide no preferential status to current lessees of historic lighthouse properties.
3. Conveyance of the Historic Lighthouse Property. Upon DOI's selection of an eligible entity, GSA will convey the title of the property to the eligible entity—*i.e.*, GSA will conduct the disposal action. The servicing real property staff shall ensure that GSA

provides the Coast Guard with a copy of the executed, recorded quitclaim deed (bearing the clerk's stamps and recording office's deed book and page numbers) in the case of a conveyance to a non-Federal entity. Upon receipt, the servicing real property staff shall file the deed or other notification, remove the subject real property from the Coast Guard's inventory, and notify the FINCEN of the completed disposal.

4. Protection and Maintenance. The Coast Guard shall be responsible for all protection and maintenance expenses until GSA disposes of the subject historic lighthouse property.
5. Environmental Requirements. The requirements of section II shall apply to disposals of historic lighthouse properties.
6. Aids to Navigation (ATONs). In accordance with the NHLPA, active ATONs that are located upon the historic lighthouse property at the time of conveyance will remain the property of the United States, under the administrative control of the Coast Guard. The Coast Guard will continue to be responsible for the operation and maintenance of the ATON. The provisions of the NHLPA authorize the reservation of easements and other rights to protect the United States' ability to operate and maintain an ATON, and its right of access to the ATON, after the conveyance of title to a non-Federal entity by GSA. The servicing real property staff, and if necessary, the servicing legal staff, shall coordinate with their respective GSA counterparts to ensure that the quitclaim deed and any other conveyance documentation includes the necessary protections.
7. Historic Artifacts. Under the NHLPA, title to historic artifacts that are located upon the historic lighthouse property at the time of the property's conveyance to a non-Federal entity, may also be conveyed, at the option of GSA, unless such historic artifacts comprise, in whole or in part, an active ATON (see paragraph III.H.6. above). Title to historic artifacts that are associated with, but not located at the historic lighthouse property at the time of conveyance, shall remain with the United States, under the administrative control of the Coast Guard (this NHLPA provision is intended to exempt, from conveyance to the eligible entity, artifacts that have been previously moved from the property to another site).

#### **IV. SPECIFIC LEGISLATIVE CONVEYANCES OF COAST GUARD CONTROLLED REAL PROPERTY AND OTHER AUTHORITIES**

##### **A. General**

1. Introduction. Congress may enact laws that require the Secretary of Transportation or the Commandant to convey specifically identified real properties to specific recipients. These conveyances require the Coast Guard to perform the disposal role traditionally undertaken by GSA (*i.e.*, the Coast Guard, rather than GSA, became responsible for ensuring the proper transfer of the United States' title to the non-Federal recipient as well as satisfaction of all disposal agency environmental requirements). Congress has also, from time to time, provided the Coast Guard with the authority, usually temporary and discretionary, to sell real property. These authorities are described in subsection IV.D. below.
2. Policy. As the Coast Guard is not funded or staffed to act as a real property disposal agency, the Coast Guard will recommend that GSA be tasked with the disposal agency function in any draft legislation that directs or authorizes the conveyance of any Coast Guard controlled property. Congress, however, does not always adopt the Coast Guard's recommendation and will, at times, pass legislation that tasks the Coast Guard with the disposal agency function. Therefore, the procedures for effectuating specific legislative conveyances with GSA as the disposal agency and with the Coast Guard in that role are set forth in this section.
3. Authority. Real property and related personal property subject to a specific legislative conveyance are disposed of under the authority of that specific provision of law (typically a provision in the Coast Guard's authorization or appropriations act). Such provision will usually authorize the reservation of easements or other rights to protect any post-conveyance interests the United States may retain in the subject real property (*e.g.*, an easement of access across the property).
  - a. FPASA. Unless the specific statutory provision explicitly states otherwise, the Federal Property and Administrative Services Act of 1949 (FPASA) does not apply to specific legislative conveyances. As such, neither GSA nor the Coast Guard is required to screen the subject real property with other Federal agencies or for public benefit conveyances, but may proceed directly to the disposal action (*e.g.*, preparation of the quitclaim deed and other conveyance documentation, satisfaction of environmental requirements, etc.).
  - b. Public Domain Land. Land withdrawn from the public domain for the Coast Guard's use that is the subject of a specific legislative conveyance shall lose its status as public domain land. In effect, the specific provision that directs the conveyance of the public domain land to a non-Federal entity shall take precedence over the more general statutory regime governing public domain lands. As such, the land does not need to be formally reported to the Bureau of Land Management (BLM), although it is

recommended that the servicing real property staff notify BLM in writing of the pending disposal action.

- c. McKinney Act. Specific legislative conveyances of Coast Guard controlled real property are exempt from the provisions of the McKinney Act, 42 U.S.C. § 11411 (41 C.F.R. § 101-47.902(b)(3)). Thus, there is no requirement to screen the subject real property with any organization that represents the homeless.
4. Shall vs. May/Commandant Approvals and NEPA Requirements. As further described in paragraphs IV.A.5.-6. below, the language of the specific provision will either make the conveyance mandatory (“shall convey” or words to that effect), or make the conveyance discretionary (“may convey” or words to that effect). This wording impacts the required documentation to be submitted to Headquarters, including the NEPA documentation (see paragraph III.A.4.).
  5. Mandatory (“Shall Convey”).
    - a. Required Documentation. If the conveyance is mandatory, the submission of the documentation required by paragraph III.A.3. is not required, except for NEPA requirements (see subparagraph IV.A.5.c.).
    - b. Required Approval. The servicing real property staff shall not initiate any mandatory conveyance until approval is obtained from Commandant (G-SEC).
    - c. NEPA Requirements. The focus of NEPA analysis will depend on whether the disposal of the real property is a “stand alone” action (*i.e.*, not directly connected to any other contemplated Coast Guard actions), or is actually an integral part of a larger proposed action or series of interconnected actions. Clauses (1) and (2) below address the “stand alone” action; clause (3) the larger action or series of interconnected actions.
      - (1) Specific legislative conveyances using mandatory language (“shall convey”) that does not provide for any Coast Guard discretion does not trigger NEPA requirements. When there is no agency discretion, there is no decision-making process to be informed by NEPA analysis.
      - (2) Mandated conveyances using mandatory language (“shall convey”) that nevertheless allow for some Coast Guard discretion in the matter (for instance, authority to retain some portion of the subject real property or to reserve easements) may be categorically excluded under categorical exclusion (CE) #15 (see subparagraph III.A.4.a. and NEPA Manual, figure 2-1 for additional procedures). As explained in subparagraph III.A.4.a., if the environmental checklist indicates that there is the potential for any significant impacts to the environment or human health, then the categorical exclusion is not available and the preparation of either the EA or the EIS will be necessary.

- (3) NEPA analysis of property disposals that are part of a larger agency action or series of actions must be conducted as part of the analysis of the larger action or series of actions, and as such, will, in all probability, require the preparation and submission of a planning proposal and the preparation of an EA or EIS (see subparagraph III.A.4.a. and paragraph III.A.5.).

6. Discretionary (“May Convey”).

- a. Required Documentation. If the conveyance is discretionary (“may convey”), the unit concerned must document any determination to dispose of the subject real property in accordance with the requirements of paragraph III.A.3.-5. unless these requirements are waived by Commandant (G-CCS) (in those instances in which a planning proposal is required) or (G-SEC) (in those instances not requiring a planning proposal). The NEPA requirements (paragraph III.A.4.), however, cannot be waived.
- b. Required Approval(s). Commandant (G-CCS) or (G-SEC) approval, as appropriate, and possibly DOT approval, must be obtained before the servicing real property staff can initiate a “may convey” disposal action.
- c. NEPA Requirements. The Coast Guard must comply with NEPA in exercising a discretionary “may convey” conveyance. The discussions in clauses (2)-(3) of subparagraph IV.A.5.c. above apply to such discretionary conveyances. Unlike all other conveyances, however, in this discretionary context, the Coast Guard is deciding whether or not to convey the subject real property to a particular recipient. Therefore, the identity of, and intended uses of the property by, the recipient must be considered in the NEPA analysis.

7. Economy Act Agreement. If the specific provision tasks the Coast Guard to act as the disposal agency, the Coast Guard can, as an alternative to carrying out the disposal action with its own resources, enter into an Economy Act agreement with GSA assuming sufficient funds are available. Under an Economy Act agreement, the Coast Guard would pay GSA to conduct the disposal action. The extent of GSA’s responsibilities in carrying out the disposal action, including compliance with all applicable laws and regulations, would be determined through negotiations with GSA. The terms of the agreement between GSA and the Coast Guard would be memorialized in a memorandum of agreement (see Memoranda of Understanding/Agreement, COMDTINST 5216.18). The following requirements apply:

- a. Approval and Funding. Any request to enter into an Economy Act memorandum of agreement (MOA) with GSA must be approved by Commandant (G-SEC). Commandant (G-SEC) must ensure that sufficient funds are available for obligation before entering into, or approving, an Economy Act MOA, unless the specific statutory provision authorizing the transaction allows for the sale of the property; in this case, those expenses directly related to the property’s sale may be deducted from the sale proceeds per the authority of 40 U.S.C. § 485a (see subsection IV.D. for

further requirements). The servicing legal staff shall be provided an adequate opportunity to review and comment upon the draft MOA.

- b. Contracting Officer Approval. Economy Act transactions are considered procurements (in this case, the Coast Guard would be procuring GSA's real property disposal services). As such, the approval of a contracting officer, including the necessary contracting officer determinations and findings, is a prerequisite to entering into an Economy Act MOA (see Federal Acquisition Regulation (FAR) Subpart 17.5). Contracting officer approval is required regardless of whether the conveyance is made at no cost or whether a sale is authorized.

## **B. Specific Legislative Conveyances/GSA Acts As Disposal Agency**

1. General. If the specific provision mandating the disposal of the subject real property places the responsibility for the disposal action upon GSA, then the procedures set forth in this subsection shall be followed.
2. Information To Be Provided To GSA/Property Matters. Once being directed by Commandant (G-SEC) to proceed with the conveyance of Coast Guard controlled property, the servicing real property staff will contact the regional GSA office that has responsibility over the geographic area in which the subject real property is located. Although a formal report of excess is not required in a specific legislative conveyance, the servicing real property staff shall provide the regional GSA office with all necessary information to effectuate the disposal action. In providing information or assistance to GSA, the servicing real property staff will identify or describe, and provide any documentation regarding:
  - a. The subject real property (including any easements, outleases, or other third party interests or claims that may encumber the property);
  - b. All remaining Coast Guard interests that GSA will have to protect (*e.g.*, reservation of an easement to operate and maintain an aid to navigation, reservation of an easement of access for continued Coast Guard operations, air rights easement, covenant restricting the use of the property by the recipient, etc.); and
  - c. All related personal property that the Coast Guard wants to keep within Federal ownership, under the Coast Guard's administrative control.
3. Information To Be Provided To GSA/Environmental Requirements. Except for interior lead-based paint located in Coast Guard controlled housing (see paragraph IV.B.4.), the servicing environmental staff shall comply with or otherwise satisfy the requirements of subsection II.B. (contamination survey and confirmation sampling) and provide any additional pertinent information to GSA on the environmental condition of the subject real property (use paragraphs III.C.10.-22. as guidance in determining what information should be provided to GSA). All pertinent information on the environmental condition of the

subject real property shall be forwarded to GSA (via the servicing real property staff). **Additional procedures** for NEPA and asbestos-containing materials are as follows:

- a. NEPA. As GSA is the disposal agency, GSA shall be responsible for complying with NEPA, unless there is some matter that is left to the Coast Guard's discretion (*e.g.*, determination of the scope and location of an easement). To the extent that the exercise of such discretion by the Coast Guard requires compliance with NEPA, the procedures set forth in clauses (2) or (3), as appropriate, of subparagraph IV.A.5.c. shall be followed.
  - b. Asbestos Containing Materials (ACM). If ACM is incorporated into any structure on the subject real property, and if it is known that the recipient of the subject real property intends to use the property for school purposes, then the servicing environmental staff shall apprise GSA of this information in addition to providing GSA with the information required by paragraph III.C.14. The servicing environmental staff shall also apprise the servicing legal staff of this information.
4. Information To Be Provided To GSA/Interior LBP in Coast Guard Controlled Housing. If housing is located upon the subject real property, then the servicing environmental staff shall determine whether the HUD regulations apply (see paragraph II.E.4.). If the HUD regulations apply, or if state law imposes more stringent requirements (see subparagraph II.E.6.a.), then the following procedures must be followed:
- a. LBP Inspection and Risk Assessment. Both a LBP inspection **and** a risk assessment are required and must be completed by the Coast Guard and the results provided to GSA before the conveyance of the property. See subparagraphs II.E.6.a.-b. for substantive LBP inspection and risk assessment requirements. See also enclosure (3) entitled "Interior LBP Flowchart 3."
  - b. LBP Abatement Report. Provide GSA with a copy of all LBP abatement reports or provide a description of the abatement work and the results. In the documentation, indicate the results of the clearance test(s). See also enclosure (3) entitled "Interior LBP Flowchart 3."
5. Environmental Remediation/Abatement. The Coast Guard must satisfy the following remediation and abatement requirements before GSA can convey the property to a non-Federal entity:
- a. CERCLA hazardous substance contamination shall be remediated by the Coast Guard as necessary to protect human health and the environment in accordance with subsection II.C. and paragraphs II.D.1. and II.E.1.;
  - b. Damaged friable ACM shall be abated in accordance with paragraph II.D.2.; and
  - c. LBP and/or LBP hazards in Coast Guard controlled housing shall be abated in accordance with subparagraphs II.E.6.a. and c.



6. Protection and Maintenance. The Coast Guard shall be responsible for all protection and maintenance expenses until GSA disposes of the subject real property.
7. GSA Disposal/Quitclaim Deed Preparation. GSA, with the assistance of the Coast Guard, shall be responsible for completing the disposal action. Generally, the responsibilities of GSA and various Coast Guard staffs are as follows:
  - a. GSA shall complete all required environmental consultations and notifications (*e.g.*, SHPO, Fish and Wildlife Service) after receiving the description of the environmental condition of the subject real property from the servicing environmental staff;
  - b. GSA shall prepare the quitclaim deed and any other necessary conveyance documentation;
  - c. The servicing legal staff shall review the quitclaim deed prior to its execution in order to ensure the protection of any remaining or continuing Coast Guard interests in or to the subject real property;
  - d. After any review by the servicing legal staff, the GSA official with the requisite authority shall execute the quitclaim deed;
  - e. GSA shall be responsible for ensuring delivery of the deed to the recipient;
  - f. The servicing real property staff shall request from GSA a copy of the executed deed and proof of the recipient's acceptance of the quitclaim deed (by the recipient's recordation of the deed in the local land records office); and
  - g. Upon receipt of the copy of the deed and acknowledgement of the recipient's acceptance of same, the servicing real property staff shall file the copy, remove the subject real property from the Coast Guard's inventory, and notify the FINCEN of the completed disposal.

**C. Specific Legislative Conveyances/USCG Acts As Disposal Agency**

1. General. Unless the Coast Guard enters into an Economy Act transaction with GSA (see paragraph IV.A.7.), the Coast Guard shall be solely responsible for accomplishing the real property disposal action if the applicable statute tasks the Coast Guard with the disposal action. Specifically, Coast Guard staffs will have to prepare, execute, and deliver the quitclaim deed and any other conveyance documentation, protect Coast Guard and other applicable Federal interests, and ensure that the disposal action is in compliance with all applicable laws, regulations, and executive orders. The procedures set forth in this subsection IV.C. also apply to those temporary authorities that allow the Coast Guard to sell real property.

## 2. Staff Responsibilities.

- a. Servicing Real Property Staff. The servicing real property staff shall be responsible for:
- (1) Ensuring the accuracy of the description of the subject real property;
  - (2) Identifying all third party interests encumbering or otherwise relating to the subject real property (including any disputes with or claims by third parties);
  - (3) Identifying and describing any related personal property;
  - (4) Serving as the primary liaison with the unit concerned and any other Coast Guard operational elements, and as such, identifying any Coast Guard operational interests or needs, either in regard to the disposal action or to any ongoing interests or needs that will continue to be associated with the subject real property after the disposal action (*e.g.*, an active aid to navigation will remain on the property; local Coast Guard units will require access over the property conveyed; etc.);
  - (5) Coordinating the disposal action with the unit concerned and Commandant (G-CFM) with respect to any personal property located on the subject real property;
  - (6) Providing an accurate legal description of the subject real property and all other pertinent information and documentation to the servicing legal staff for quitclaim deed preparation; and
  - (7) Upon the execution, delivery, and recordation of the quitclaim deed, the servicing real property staff shall file a copy of the executed deed, remove the subject real property from the Coast Guard's inventory, and notify the FINCEN.
- b. Servicing Environmental Staff. The servicing environmental staff shall ensure compliance with, and perform any necessary due diligence in accordance with, all applicable environmental laws, regulations, and executive orders (the responsibilities of the servicing environmental staff are set forth in more detail in the remainder of this subsection IV.C.).
- c. Servicing Legal Staff. The servicing legal staff shall provide legal advice, guidance, and assistance to the servicing real property and environmental staffs, and the unit concerned, throughout the disposal process. In addition, the servicing legal staff shall prepare the quitclaim deed that will convey the title of the United States to the non-Federal recipient as well as any other necessary documentation. The authority to reserve easements and other rights, or to place restrictive covenants upon the recipient's use of the property, will be prescribed by the specific provision of law authorizing the conveyance. If authorized by the specific provision, easements or other rights can be reserved and restrictive covenants can be placed upon the recipient, through incorporation within the quitclaim deed; enclosure (5) is a sample quitclaim deed.

Upon execution of the deed by the MLC Commander, the servicing legal staff shall ensure proper delivery of the deed to the recipient, and determine whether the recipient accepted the deed. Upon the recipient's acceptance of the deed, the servicing legal staff shall provide a copy of the executed deed to the servicing real property staff. The servicing legal staff's responsibilities are set forth in more detail in the remainder of this subsection IV.C.

- d. MLC Commander. The MLC Commander, or his or her delegatee, shall execute the quitclaim deed and any other necessary documentation.
  - e. Commandant (G-LGL) and (G-LEL). Commandant (G-LGL) and (G-LEL) shall be available to provide legal advice to Commandant (G-SEC) and other Headquarters programs and assist the servicing legal staff, as appropriate.
3. Environmental Requirements/General. In a specific legislative conveyance under which the Coast Guard bears the responsibility for the real property disposal action, the Coast Guard must ensure compliance with all applicable Federal environmental laws, regulations, and executive orders that are triggered as a result of the disposal action. At the minimum, the Coast Guard must comply with or otherwise meet the environmental requirements described in paragraphs IV.C.4.-17. below.
  4. National Environmental Policy Act (NEPA). See paragraphs IV.A.5.c. and IV.A.6.c. above.
  5. Environmental Remediation/Abatement. If the subject real property is to be conveyed to a non-Federal entity, the Coast Guard must satisfy the following remediation and abatement requirements before GSA can convey the property:
    - a. CERCLA hazardous substance contamination shall be remediated by the Coast Guard as necessary to protect human health and the environment in accordance with subsection II.C. and paragraphs II.D.1. and II.E.1.;
    - b. Damaged friable ACM shall be abated in accordance with paragraph II.D.2.; and
    - c. LBP hazards Coast Guard controlled housing shall be abated in accordance with subparagraphs II.E.6.a. and c.
  6. Section 120(h) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Section 120(h) of CERCLA requires that the recipient be given written notice of all known hazardous substances, as that term is defined by Environmental Protection Agency (EPA) regulations at 40 C.F.R. Part 373, that were either stored for one year or more, known to have been released, or disposed of upon the subject real property. The written notice shall include the type and quantity of such hazardous substances, the time such storage, release or disposal occurred, and a description of all remedial action taken. The written notice shall be based upon a complete search of the Coast Guard's files

and upon the completion of a contamination survey and any confirmation sampling per subsection II.B.

7. CERCLA/Servicing Environmental Staff Responsibilities. The servicing environmental staff shall prepare the written notice described in paragraph IV.C.6. above, sometimes referred to as a “contamination statement,” and ensure that such notice is in compliance with the requirements of the EPA regulations at 40 C.F.R. Part 373. If the subject real property appears to be uncontaminated based upon the contamination survey, ensure CERCLA 120(h)(4)(A) and (B) steps are satisfied.
8. CERCLA/Servicing Legal Staff Responsibilities. The servicing legal staff shall attach to or otherwise incorporate within the quitclaim deed, the written notice described in paragraph IV.C.6. above. The performance of all remedial action necessary to protect human health and the environment from CERCLA hazardous substance contamination (including the use of land use controls, see paragraph II.C.5.) will allow the servicing legal staff to place the following CERCLA required covenants in the quitclaim deed:
  - a. A covenant that all remedial action necessary to protect human health and the environment, in regard to any hazardous substance contamination on the subject real property, has been taken before the date of the property’s conveyance to the non-Federal entity (this covenant shall be modified accordingly if the CERCLA early transfer authority is exercised, see paragraph II.C.4.); and
  - b. A covenant stating that any additional remedial action found to be necessary after the date of such conveyance shall be conducted by the United States, acting by and through the Commandant, United States Coast Guard, and an easement of access is reserved for such purpose.
9. Asbestos Containing Materials. If damaged friable ACM exists in the interior of a structure (see paragraph II.D.2.), it is Coast Guard policy to abate the ACM prior to conveying the subject real property to a non-Federal entity. This abatement will prevent an ACM release into the outside environment subsequent to the conveyance, which would trigger Coast Guard liability under CERCLA. In contrast, nonfriable and undamaged friable ACM should remain undisturbed (unless the structure is being demolished or renovated by the Coast Guard).
  - a. Servicing Environmental Staff Responsibilities. The servicing environmental staff shall prepare a statement of whether ACM is present upon the subject real property, and if present, the statement shall include a description of the type, location and condition of the ACM incorporated in the construction, repair, or alteration of any building or improvement on the subject real property (*e.g.*, fireproofing, pipe insulation, etc.), and a description of any ACM control measures taken for the subject real property. If the recipient will use the subject real property for school purposes, then the servicing environmental staff shall consult with the servicing legal staff as to any additional information to be provided to the recipient.

- b. Servicing Legal Staff Responsibilities. The above statement shall be attached to or incorporated within the quitclaim deed. In addition, it is recommended that the servicing legal staff include a quitclaim deed provision patterned after the warning statement set forth in the GSA regulations at 41 CFR 101-47.304-13.
10. Lead-Based Paint (LBP)/Interior LBP in Coast Guard Controlled Housing. In addition to the responsibilities discussed below, the servicing environmental and legal staffs shall comply with all relevant state laws and local requirements for interior LBP in housing, since the Toxic Substance Control Act (TSCA) waives sovereign immunity (*i.e.*, allows the United States to be sued under state and local laws) for LBP hazards at Federal facilities (see TSCA, 15 U.S.C. § 2688). If state or local requirements address the same matter(s) as the Federal requirements discussed below, the servicing environmental and legal staffs shall comply with the more stringent requirement.
- a. Servicing Environmental Staff Responsibilities. For properties with Coast Guard controlled housing, see paragraph II.E.4. to determine if the HUD regulations apply. If the HUD regulations apply, or if state law imposes more stringent requirements (see subparagraph II.E.6.a.), then the procedures set forth below must be followed. For further details, see enclosure (3), entitled “LBP Flowchart 3.”
    - (1) LBP Inspection and Risk Assessment. Both a LBP inspection **and** a risk assessment are required and must be completed by the Coast Guard and the results provided to the recipient of the property before the property may be conveyed. See subparagraph II.E.6.b. for substantive LBP inspection and risk assessment requirements. Provide the recipient (via the servicing legal staff) with a copy of the results of the most recent LBP inspection and risk assessment performed on the residential structures.
    - (2) LBP Abatement. The Coast Guard must abate all LBP hazards before the subject real property may be conveyed. See subparagraph II.E.6.c. for substantive LBP abatement requirements. Upon completion of the abatement work, provide the recipient (via the servicing legal staff) with a copy of all abatement reports or provide a description of the abatement work and the results. In the documentation, indicate the results of the clearance test(s).
  - b. Servicing Environmental Staff Responsibilities/Disclosure. Full and complete disclosure of LBP and/or LBP hazards to potential recipients of Federally owned housing, as well as providing such recipients with accurate information, is one of the principle purposes of the applicable HUD regulations. Prior to the conveyance of the subject real property, and in the case of a sale, before the purchaser is obligated under a contract of sale, the servicing environmental staff shall (via the servicing real property or legal staff as appropriate):
    - (1) Provide the recipient or purchaser with a copy of the EPA approved lead hazard information pamphlet entitled, “Protect Your Family from Lead in Your Home” or an equivalent pamphlet that has been approved by the EPA for use in the

state where the property is located (the EPA information pamphlet is available over the Internet at <http://www.epa.gov/lead/leadpdf.pdf>, or by calling the National Lead Information Center (1-800-424-LEAD));

- (2) Disclose to the recipient or purchaser the presence of any known LBP and/or LBP hazards in the subject housing and any additional information concerning the known LBP and/or LBP hazards, including the basis for the determination that LBP and/or LBP hazards exist, the location of the LBP and/or LBP hazards, and the condition of the painted surfaces;
  - (3) Provide the recipient or purchaser with any records or reports pertaining to LBP and/or LBP hazards in the subject residential structures, including records and reports regarding:
    - (a) Common areas; and
    - (b) Other residential units in multifamily housing structures (*e.g.*, apartment buildings), provided that such information is part of an evaluation or reduction of LBP and/or LBP hazards in the multifamily housing structure as a whole; and
  - (4) Provide the recipient or purchaser with a 10-day period (unless the parties mutually agree, in writing, upon a different period of time) to conduct a risk assessment or inspection for the presence of LBP and/or LBP hazards. The recipient or purchaser may waive the opportunity to conduct the risk assessment or inspection by so indicating in writing.
- c. Servicing Legal Staff Responsibilities. The servicing legal staff shall include within or attach to the quitclaim deed, or the contract of sale, if appropriate, the following:
- (1) The Lead Warning Statement (attached as enclosure (4) to this chapter);
  - (2) A statement disclosing the presence of known LBP and/or LBP hazards in the subject housing and any additional information concerning the known LBP and/or LBP hazards, including the basis for the determination that LBP and/or LBP hazards exist, the location of the LBP and/or LBP hazards, and the condition of the painted surfaces;
  - (3) A list of any records or reports pertaining to LBP and/or LBP hazards in the subject housing;
  - (4) A statement signed by the recipient or purchaser affirming receipt of the information described in clauses (2)-(3) of this subparagraph, and the EPA approved lead hazard information pamphlet entitled, "Protect Your Family from Lead in Your Home" or state approved equivalent (see clause (1) of subparagraph IV.C.10.b.); and

- (5) A statement signed by the recipient or purchaser acknowledging that he or she was provided a 10-day period (or a different time period that is mutually agreed upon in writing) in which to conduct a risk assessment or inspection for the presence of LBP and/or LBP hazards or a statement that the recipient waived this opportunity.

11. LBP/Exterior LBP and Interior LBP in Non-Residential Structures.

- a. Exterior LBP. For the servicing environmental staff's responsibilities, follow subparagraph II.E.1. If there is lead contamination, then the servicing environmental staff must provide the appropriate CERCLA documentation (see paragraphs IV.C.6.-7.). For the servicing legal staff's responsibilities, see paragraph IV.C.8.
- b. Interior LBP in Non-Residential Structures. For the servicing environmental and legal staff's responsibilities, see paragraphs II.E.2-3.

12. Underground Storage Tanks (USTs).

- a. Servicing Environmental Staff Responsibilities. Based upon a review of Coast Guard files, the contamination survey, and if available, the results of any confirmation sampling, the servicing environmental staff shall prepare a statement identifying and describing the number of current and former USTs that are or were located on the subject real property (see CFATF Document, Appendix O for a sample form—the CFATF Document is found on the Internet at <http://es.epa.gov/oeca/fedfac/policy/eddado.pdf>, and with respect to each UST currently or formerly located on the property, the statement must describe the following:
  - (1) The UST's location;
  - (2) The UST's capacity;
  - (3) The UST's compliance status with EPA regulations (40 C.F.R. Part 280) and state regulations;
  - (4) Whether the UST is in use; and
  - (5) The past or current substances stored in the UST.
- b. Servicing Legal Staff Responsibilities. The statement prepared by the servicing environmental staff shall be attached to or otherwise incorporated within the quitclaim deed.

13. National Historic Preservation Act (NHPA). If the subject real property is listed, is eligible for, or has been nominated for listing in the National Register of Historic Places

(NRHP) or is in proximity to a property on the NRHP, then the disposal action is considered an undertaking under the NHPA.

- a. Servicing Environmental Staff Responsibilities. The servicing environmental staff shall ensure that the Coast Guard complies with the process mandated by section 106 of the NHPA, including any required consultation with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officers (THPO) (if the subject real property is located upon Native American tribal lands, if the disposal action would affect historic properties on tribal lands, or if the disposal action would affect historic properties to which a Native American tribe or Native Hawaiian organization attaches religious or cultural importance), and other interested parties (*e.g.*, tribal groups without THPOs, local governments, etc.). See 36 C.F.R. Part 800 for further detail.
  - b. Servicing Environmental Staff/Post-Conveyance Deed Restriction. In any consultation with the SHPO or the THPO, the Coast Guard cannot agree to any post-conveyance deed restriction that limits the recipient's use of the subject real property, if the burden of monitoring or enforcing such restriction is placed upon the Coast Guard. Certainly, the Coast Guard can agree to place such post-conveyance restrictions in the quitclaim deed ***provided*** that the SHPO, the THPO, or another entity agree to monitor and enforce such restrictions. If the SHPO or the THPO insists upon, but refuses to monitor and enforce, any such post-conveyance restrictions, then the servicing environmental staff shall notify both Commandant (G-SEC) and the servicing legal staff.
  - c. Servicing Legal Staff Responsibilities. The servicing legal staff shall include within, or attach to, the quitclaim deed any and all restrictions required as the result of the consultation process. Any restrictions identified in the consultation process shall be imposed upon the recipient, and the recipient's successors and assigns. Such restrictions shall be in the form of a restrictive covenant running with the land, a historic preservation covenant or easement, or similar legal device.
  - d. Servicing Legal Staff/Post-Conveyance Deed Restriction. Unless the statutory provision mandating the conveyance specifically requires otherwise, the Coast Guard shall not agree to monitor and enforce any post-conveyance historic preservation deed restriction. If the SHPO, the THPO, or another party agrees to monitor and enforce such restrictions, then the quitclaim deed shall so indicate. See the sample quitclaim deed, attached as enclosure (5), which has a historic preservation covenant with such language.
14. Coastal Zone Management Act (CZMA). The servicing environmental staff will obtain a consistency determination, if required, from the requisite state agency. See subparagraph II.A.3.b.



15. Endangered Species Act.

- a. Servicing Environmental Staff Responsibilities. The servicing environmental staff shall identify the presence, or likely presence, of listed (*i.e.*, endangered or threatened) species, if any, on or adjacent to the subject real property, or the presence of a critical habitat for a given species on or adjacent to the property. If listed species are present or are likely to be present, or if a critical habitat is present, then a written determination must be made as to whether the disposal action may affect the listed species or their critical habitats. If a listed species or a critical habitat will be affected, then the servicing environmental staff shall consult, in accordance with 50 C.F.R. Part 402, with either (a) the Fish and Wildlife Service (FWS), Department of the Interior or (b) the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Department of Commerce, depending upon which agency has jurisdiction over the listed species.
  - b. Servicing Environmental Staff/Post-Conveyance Deed Restriction. In any consultation with the FWS or the NMFS, the Coast Guard cannot agree to any post-conveyance deed restriction that limits the recipient's use of the subject real property, if the burden of monitoring or enforcing such restriction is placed upon the Coast Guard. Certainly, the Coast Guard can agree to place such post-conveyance restrictions in the quitclaim deed ***provided*** that the FWS, the NMFS, as appropriate, or another entity agree to monitor and enforce such restrictions. If the FWS or the NMFS insists upon, but refuses to monitor and enforce, any such post-conveyance restrictions, then the servicing environmental staff shall notify both Commandant (G-SEC) and the servicing legal staff.
  - c. Servicing Legal Staff Responsibilities. The servicing legal staff shall include within or attach to the quitclaim deed any and all restrictions required as a result of the consultation process. The restrictions identified in the consultation process shall be imposed upon the recipient, and the recipient's successors and assigns. Such restrictions shall be in the form of a restrictive covenant running with the land, a conservation easement, or similar legal device.
  - d. Servicing Legal Staff/Post-Conveyance Deed Restriction. Unless the statutory provision mandating the conveyance specifically requires otherwise, the Coast Guard shall not agree to monitor and enforce any endangered species covenant or other deed restriction. If the FWS, the NMFS, or another party agrees to monitor and enforce such restrictions, then the quitclaim deed shall so indicate. See the sample quitclaim deed, attached as enclosure (5), which has an endangered species covenant with such language.
16. Floodplains. Executive Order (E.O.) 11988 of 24 May 1977 (Flood Plain Management), 42 Fed. Reg. 26951, as amended by E.O. 12148, 44 Fed. Reg. 43239, governs the use and disposal of properties that contain floodplains. Within the Department of Transportation (DOT), the above executive orders are implemented by DOT Order

5650.2 of 23 April 1979. The servicing environmental and legal staffs shall comply with DOT Order 5650.2 as follows:

- a. Servicing Environmental Staff Responsibilities. The servicing environmental staff shall provide, to the servicing legal staff, detailed information about any known flood hazards or flooding of the subject real property, and if all or part of the property is located in a floodplain, a listing of and citation to those uses that are restricted under applicable Federal, State, or local regulations. The servicing environmental staff shall consult Commandant (G-SEC) in the event the subject real property contains floodplains or other flood hazards that would require the property to be withheld under Executive Order 11988.
  - b. Servicing Legal Staff Responsibilities. The servicing legal staff shall include within, or attach to, the quitclaim deed, information about any known flood hazards or flooding of the subject real property, the locations of any floodplains located upon the property, and all floodplain management requirements and use restrictions mandated by Federal, state, and local wetlands regulations.
17. Wetlands. E.O. 11990 of 24 May 1977 (Protection of Wetlands), 42 Fed. Reg. 26961, as amended by E.O. 12608 of 9 September 1987, § 28, 52 Fed. Reg. 34617, governs the use and disposal of properties that contain wetlands. Within the Department of Transportation (DOT), the above executive orders are implemented by DOT Order 5660.1a of 24 August 1978. The servicing environmental and legal staffs shall comply with DOT Order 5650.2 as follows:
- a. Servicing Environmental Staff Responsibilities. The servicing environmental staff shall identify the presence and location of any wetlands upon the subject real property. In this regard, the servicing environmental staff may consult the appropriate National Wetland Inventory (NWI) map or conduct a field investigation to determine whether wetlands are present. In addition to providing the location of any wetlands, the servicing environmental staff shall provide to the servicing legal staff, information concerning any permits or certified wetland delineations, and a listing of citations to relevant requirements under applicable Federal, State, or local regulations. The servicing environmental staff shall consult Commandant (G-SEC) in the event the subject real property contains wetlands that would require the property to be withheld under E.O. 11990.
  - b. Servicing Legal Staff Responsibilities. The servicing legal staff shall include within, or attach to, the quitclaim deed information about the locations of wetlands and all use restrictions mandated by Federal, state, and local wetlands regulations, in order to avoid adverse effects to wetlands.
18. MLC Review. The servicing environmental staff shall ensure that the Coast Guard meets the environmental requirements listed in paragraphs IV.C.10.-22. above. Upon satisfaction of the environmental requirements, the servicing environmental staff shall transmit, in writing, its findings, determinations, and any related documentation for

MLC(s) review. If MLC(s) determines that the servicing environmental staff has fully met all environmental requirements, MLC(s) shall forward a copy of the servicing environmental staff's findings, determinations, and related documentation to the servicing legal staff. If the servicing environmental staff has not fully met such requirements, MLC(s) shall identify the deficiencies and require the servicing environmental staff to correct the same.

19. Quitclaim Deed Preparation, Execution, and Delivery. Upon receipt of the environmental staff's findings, determinations, and related documentation, the servicing legal staff shall prepare the quitclaim deed and any other necessary documentation. A sample quitclaim deed is attached as enclosure (5). The servicing legal staff shall ensure that the deed's execution meets all requirements of state law (*e.g.*, attestation, notarization, etc.) to ensure that the recipient can properly record the deed in the local land records office. Once prepared, Commander, MLC or his or her delegatee shall execute and deliver the quitclaim deed. The deed shall be delivered by certified mail, return receipt or other suitable means of delivery that will allow verification of the grantee's receipt. At least one copy of the executed deed shall be retained for the Coast Guard's property records. A quitclaim deed is the only permitted instrument by which the title of the United States to a fee simple interest in real property is conveyed. Use of a general warranty or other deed is prohibited. Any exception must be approved by Commandant (G-LGL).
20. Acceptance of Quitclaim Deed. The servicing legal staff shall ascertain whether the recipient accepted the quitclaim deed. In this regard, acceptance is presumed if the recipient records the deed in the local land records office. The servicing legal staff shall obtain a copy of the recorded deed (bearing the clerk's stamps and recording office's deed book and page numbers) and provide the same to the servicing real property staff.
21. Refusal to Accept Quitclaim Deed. If the recipient does not accept the deed, the title to the subject real property shall still be deemed held by the United States and the Coast Guard shall remain responsible for the property. If the recipient refuses to accept the deed, the servicing legal staff shall determine the reason for the refusal and attempt to resolve the matter. If the matter cannot be resolved, the servicing legal staff shall notify the servicing real property staff and Commandant (G-LGL).
22. Closing File/Notification of FINCEN. Once notified that the recipient has accepted the quitclaim deed, the servicing real property staff shall file a copy of the deed, remove the subject real property from the Coast Guard's inventory, and notify the FINCEN of the completed disposal.

#### **D. Authority to Sell Real Property And Retain Proceeds**

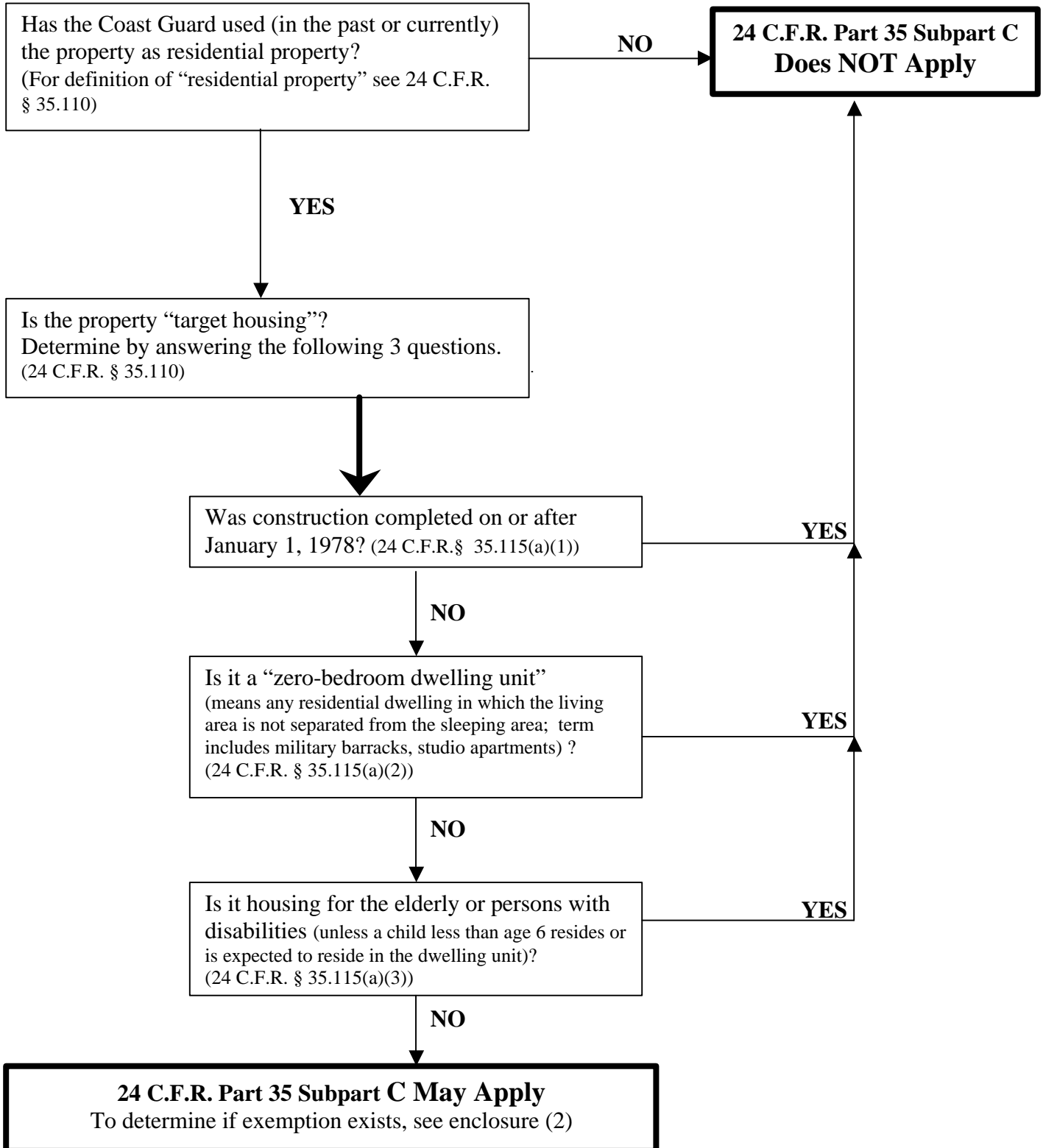
1. General. From time to time, Congress has provided the Coast Guard with the authority to sell Coast Guard controlled real property on the behalf of the United States. Typically, such authorities are both temporary and discretionary, and are usually enacted as a

provision of a Department of Transportation appropriations act or a Coast Guard authorization act.

2. Sale of Surplus Property. If the authority only provides for the sale of *surplus* real property, then the Department of Transportation must first report the subject real property as excess property to GSA, in accordance with the Federal Property and Administrative Services Act of 1949. GSA must then determine that the property is surplus property, before the Coast Guard can sell the property.
3. Consultation Requirement. Commandant (G-SEC), before delegating any real property sale authority to the Commander, MLC, shall consult with Commandant (G-CPA), (G-CBU), and (G-LGL).
4. Deduction of Transaction Expenses from Gross Proceeds. If the specific statutory authority allows the Coast Guard to sell the property, then those expenses directly related to the property's sale may be deducted from the gross sale proceeds per the authority of 40 U.S.C. § 485a.
5. Retention of Net Proceeds. If the specific statutory authority allows the Coast Guard to retain the proceeds of sale, and after deducting for transactional expenses (see paragraph IV.D.4. above), then the net proceeds of sale shall be credited to the account designated by the statute. The requirements of each sale authority will vary—some authorities may require a total or partial offset of any proceeds received (*i.e.*, the Coast Guard's budget authority is reduced by the amount of the required offset) and may further require that the proceeds be used for a specific purpose or program. Also, if the specific provision is part of an annual appropriations act, then the authority will expire at the end of the fiscal year for which the appropriations were made, unless the statutory language explicitly provides otherwise. Thus, in order to retain the proceeds, the closing (*i.e.*, the conveyance of title) must occur in that fiscal year. **Note: The authority to retain proceeds must be explicitly stated. If the statutory provision authorizing a sale is silent in regard to the retention of proceeds, then the proceeds cannot be credited to any Coast Guard account but must be credited to the miscellaneous receipts account of the Treasury's general fund.**
6. Other Requirements. The Coast Guard may either perform the sale itself or enter into an Economy Act transaction with GSA, in which the Coast Guard would, in effect, hire GSA to perform the sale. When the Coast Guard acts as the disposal agency, it must prepare and execute the quitclaim deed and comply with all applicable laws, regulations, and executive orders. In this regard, the procedures of subsection IV.C. would be followed. If the Coast Guard enters into an Economy Act transaction with GSA, the memorandum of agreement between GSA and the Coast Guard would determine both Coast Guard and GSA responsibilities. The specific requirements of the appropriations act authority must be followed (*e.g.*, meeting any offset requirements). Further, any authority vested in the Commandant must be delegated, as appropriate, to the Commander, MLC level before the authority can be exercised.

**Interior LBP Flowchart 1**  
**(Determine if 24 C.F.R. Part 35 Subpart C Applies to Property being Disposed)**

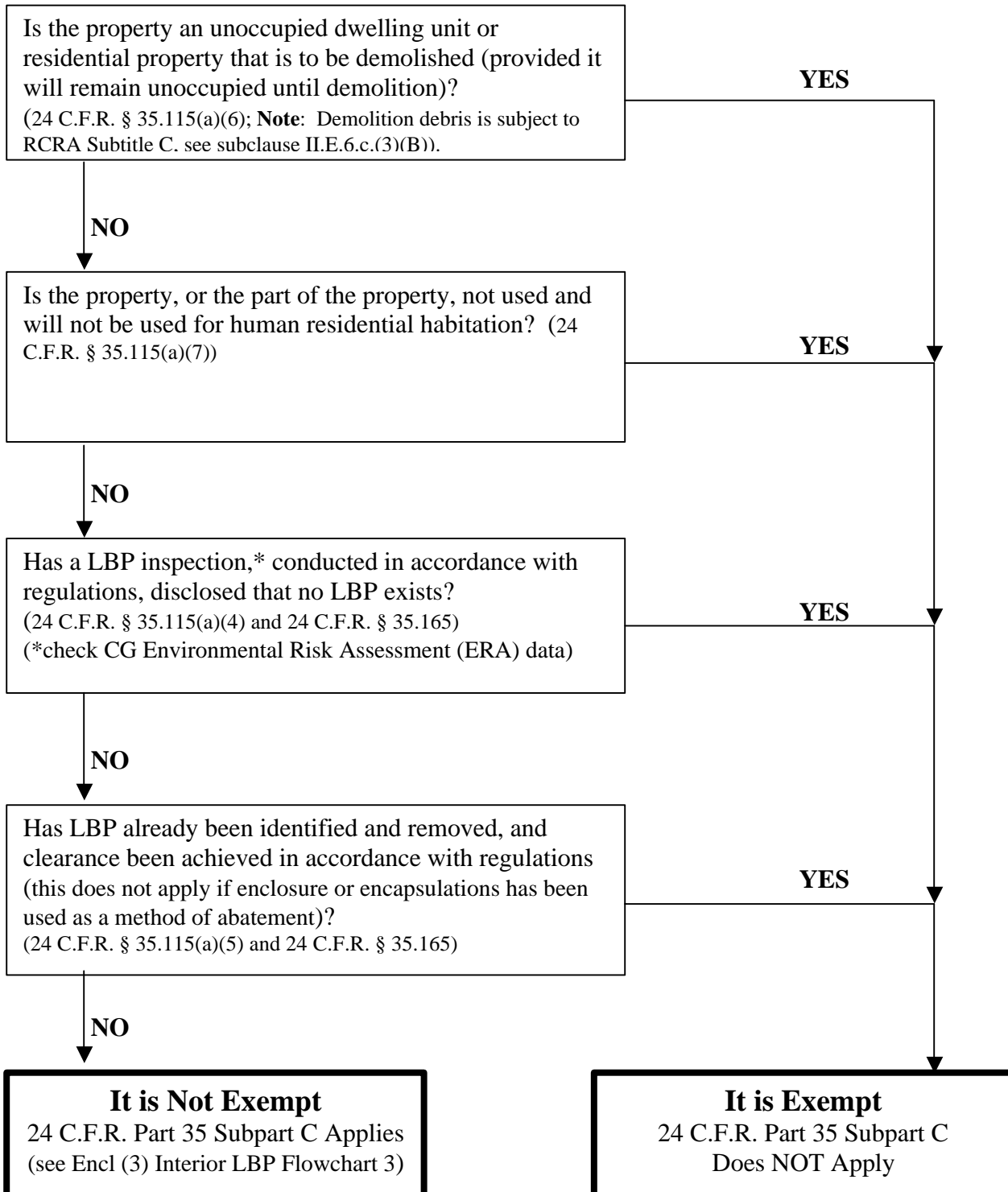
Note: Specific regulation citations are noted in parentheses



**Interior LBP Flowchart 2  
Exemption Determination  
(Determine if Exempt from 24 C.F.R. Part 35 Subpart C)**

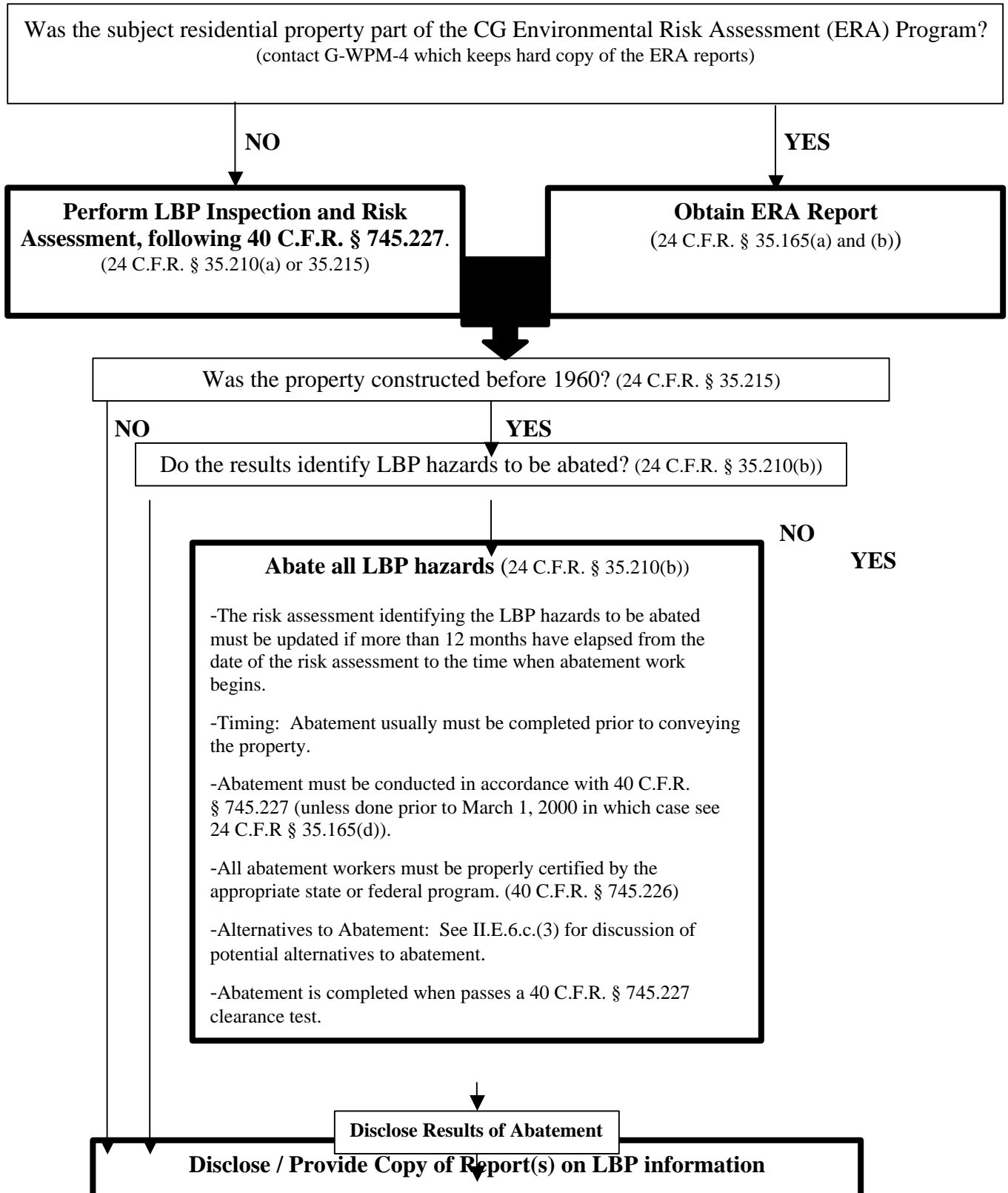
Note: This is a *summary* of exemptions, specific criteria should be reviewed in 24 C.F.R. § 35.115.

Determine if the “target housing” (from Interior LBP Flowchart 1) is exempted by answering the following questions:



### Interior LBP Flowchart 3 Requirements of 24 C.F.R. Part 35 Subpart C

**Note:** Review Interior LBP Flowchart 1 & 2 to determine if property is subject to 24 C.F.R. Part 35, Subpart C requirements.



### **Lead Warning Statement**

**(The following statement must be written in the language of the contract or quitclaim deed, *e.g.*, English, Spanish)**

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller (or Grantor) of any interest in residential real property is required to provide the buyer (or Grantee) with any information on lead-based paint hazards from risk assessments or inspections in the seller's (Grantor's) possession and notify the buyer (Grantee) of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.



## QUITCLAIM DEED

**KNOW ALL PERSONS BY THESE PRESENTS:** That the United States of America, hereinafter referred to as “Grantor,” acting by and through the Secretary of Transportation, pursuant to the powers and authority set forth in the provisions of section 1001 of Public Law 104-324, enacted on October 19, 1996, and by written delegation of authority dated November 15, 1996, acting by and through the Commandant, United States Coast Guard, and by further delegation by the Commandant, acting by and through the duly authorized designee of the Commandant, without payment of consideration, subject to any easements and encumbrances of record and subject to the reservations, exceptions, notices, covenants, conditions, and restrictions expressly contained herein, does hereby grant, convey, remise, release and quitclaim unto the Board of County Commissioners, Calvert County, Maryland, hereinafter referred to as “Grantee,” having a mailing address at Calvert County, 175 Main Street, Prince Frederick, MD 20678, all of the Grantor’s right, title and interest in and to a certain parcel of land, together with the improvements thereon, situated at the end of Lighthouse Boulevard, First Election District, County of Calvert, State of Maryland, hereinafter referred to as the “Conveyed Property,” and more particularly described as follows:

Beginning at an iron rod set on the mean high tide line of Cove Point Hollow. The same being the most southeasterly corner of Cove Point Beach Subdivision, Section Four, recorded among the Land/Plat Records of Calvert County, Maryland, in Plat Book AWR 1, Plat 62. The same also being the most southwesterly corner of the herein described.

Thence leaving the beginning point so fixed, leaving Cove Point Hollow and running with Cove Point Beach Subdivision, for a portion of, the end of Lighthouse Blvd., for a portion of, and a tract of land standing now or formerly in the name of Columbia Gas for the remainder of,

1. N 09° 02' 50? W, 717.58 feet to a stone;

Thence still with the Columbia Gas tract,

2. N 48° 27' 10? E, 143.76 feet to the mean high tide line of the Chesapeake Bay;

Thence leaving the Columbia Gas tract and running with the mean high tide of the Chesapeake Bay along a concrete seawall, for a portion of, the following sixteen (16) courses and distances,

3. N 49° 15' 52? E, 20.05 feet to a point, thence
4. S 72° 33' 11? E, 206.57 feet to a point, thence
5. S 32° 12' 36? E, 143.59 feet to a point at the end of the seawall, thence
6. S 00° 31' 47? E, 18.54 feet to a point, thence
7. S 00° 52' 56? E, 155.48 feet to a point, thence
8. S 10° 16' 54? E, 91.85 feet to a point, thence

9. S 05° 02' 11" E, 81.69 feet to a point, thence
10. S 07° 03' 36" W, 88.33 feet to a point, thence
11. S 08° 40' 05" W, 64.75 feet to a point, thence
12. S 19° 04' 13" W, 87.98 feet to a point, thence
13. S 06° 57' 49" E, 92.58 feet to a point, thence
14. S 21° 38' 36" E, 24.12 feet to a point, thence
15. S 42° 42' 01" E, 17.83 feet to a point, thence
16. S 47° 57' 58" E, 15.82 feet to a point, thence
17. S 19° 02' 44" E, 13.46 feet to a point, thence
18. N 86° 42' 22" W, 13.42 feet to a point where the mean high tide line of the Chesapeake Bay intersects with the above described Cove Point Hollow.

Thence leaving Chesapeake Bay and running with Cove Point Hollow the following eight (8) courses and distances,

19. N 26° 45' 40" W, 17.56 feet to a point, thence
20. N 43° 36' 43" W, 19.91 feet to a point, thence
21. N 21° 38' 02" W, 26.85 feet to a point, thence
22. N 19° 28' 03" W, 53.14 feet to a point, thence
23. N 79° 42' 44" W, 60.96 feet to a point, thence
24. N 89° 03' 34" W, 79.89 feet to a point, thence
25. S 80° 33' 58" W, 84.88 feet to a point, thence
26. S 73° 42' 32" W, 23.36 feet to the point and place of beginning, containing 6.0384 acres of land, more or less;

**Saving and excepting a parcel of land**, together with the improvements thereon and all appurtenant interests and rights, said parcel to be retained by the Grantor in fee simple absolute, hereinafter referred to as the "U.S. Coast Guard Lot," and more particularly described as follows:

Beginning at a point bearing S 57° 58' 40" W, 29.53 feet and N 32° 12' 36" W, 49.83 feet from the end of the fifth course of the above described 6.0384 acre tract. The same also being the most northeasterly corner of the herein described.

Thence leaving the beginning point so fixed and running through the 6.0384 acre tract with the lines of division the following four (4) courses and distances,

1. S 32° 01' 20" E, 38.17 feet to a point, thence
2. S 57° 58' 40" W, 42.90 feet to a point, thence
3. N 32° 01' 20" W, 38.17 feet to a point, thence
4. N 57° 58' 40" E, 42.90 feet to the point and place of beginning and containing 0.0376 acres of land, more or less.

Both the Conveyed Property and the U.S. Coast Guard Lot are shown on the plat of survey dated January 26, 2000, prepared by Nokleby Surveying, Inc., which is attached hereto to and made a part hereof as Appendix A.

Meaning and intending to convey the same land conveyed to the Grantor by deed from Dorcas G. Bourne, dated June 12, 1828, recorded in the land records of Calvert County in Liber W.S.M. No. 5, folio 520 – 1 & 2, & c, except for a certain parcel of land conveyed by the Grantor to Joseph C. Webster, of Solomons, Calvert County, MD, by deed, on August 11, 1926, said deed having been recorded in the land records of Calvert County in Liber A.A.H. #14, folio 455.

Together with the appurtenances and all estate and rights of the Grantor in and to the Conveyed Property.

**TO HAVE AND TO HOLD** the Conveyed Property herein granted unto the Grantee, its heirs and assigns forever.

### **Definitions**

1. The following terms are defined as follows:

- (a) The term “Grantee” shall be deemed to include the Grantee’s successors and assigns;
- (b) The term “Grantor” shall, unless otherwise expressly stated herein, mean the United States of America, acting by and through the Secretary of Transportation, pursuant to the powers and authority set forth in the provisions of section 1001 of Public Law 104-324, enacted on October 19, 1996, and by written delegation of authority dated November 15, 1996, acting by and through the Commandant, United States Coast Guard, and by further delegation by the Commandant, acting by and through the duly authorized designee of the Commandant;
- (c) The term “Entrance Road” shall mean the road located upon the Conveyed Property, which extends from Lighthouse Boulevard onto the Conveyed Property and is shown and identified upon Schedule A as “JOINT INGRESS/EGRESS EASEMENT OVER ENTRANCE ROAD AND PARKING AREA,” and further, the term “Entrance Road” shall include any changes, additions, extensions, modifications, or alterations that may be made to said road, and shall also include any future road that may replace the existing improvement;
- (d) The term “Parking Area” shall mean the parking area located upon the Conveyed Property, which is shown and identified upon Schedule A as “ASPHALT PARKING” and as “JOINT INGRESS/EGRESS EASEMENT OVER ENTRANCE ROAD AND PARKING AREA,” and further, the term “Parking Area” shall include any changes, additions, extensions, modifications, or alterations that may be made to said parking area, and shall also include any future parking area that may replace the existing improvement;
- (e) The terms “aid to navigation” and “aids to navigation” shall include, but not be limited to, lens, lanterns, lights, optics, antennas, fog horns and other sound signals, electronic navigation equipment, communications equipment, cameras, sensors, and any other associated lighthouse or navigational equipment;

- (f) The term “arc of visibility” is defined as the portion of the horizon over which a lighted aid to navigation is visible from seaward;
- (g) The term “Lantern Room” shall mean the window-encased room at the top of the lighthouse structure in which the lighted aid to navigation is located; and
- (h) The term “hazardous substance” shall have the same meaning as is set forth in Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9601(14).

### **Reservations**

- 2. Any lantern, lens, or historical artifact associated with the Conveyed Property, either located on the Conveyed Property or elsewhere, shall remain the personal property of the Grantor.
- 3. The Grantor hereby expressly reserves:
  - (a) A general, perpetual access easement over and upon the Conveyed Property, for Grantor’s employees, including but not limited to, personnel of the United States Coast Guard and United States Coast Guard Auxiliary, agents, representatives, contractors, and invitees, with necessary equipment, including the right to enter the Conveyed Property at any time, without notice, for the purpose of operating, maintaining, inspecting, repairing, installing, constructing, improving, relocating, replacing or removing any aid to navigation, or for any similar or related purpose, and for the purpose of ingress and egress to the U.S. Coast Guard Lot; said general, perpetual access easement shall include, but not be limited to,
    - (i) The perpetual right of ingress and egress over the Entrance Road and Parking Area, and
    - (ii) The perpetual right of ingress and egress in, to, and through the interior of the lighthouse structure for the purpose of access to those portions of the lighthouse structure that will be leased by the Grantor (see paragraphs 11 and 12) or encumbered by certain easements reserved in favor of the Grantor (see subparagraphs 3(c), (f)-(h));
  - (b) Four parking spaces in the Parking Area, for official use by its employees, including but not limited to, personnel of the United States Coast Guard and United States Coast Guard Auxiliary, agents, representatives, contractors, and invitees, to be available at all times, said parking spaces to be appropriately marked as “Reserved for Use By U.S. Coast Guard;”
  - (c) A perpetual easement upon the Conveyed Property to operate, maintain, inspect, repair, install, construct, improve, relocate, replace, or remove any aid to navigation, including but not limited to, the aid to navigation described in subparagraph 3(f) below, or for any other similar or related purpose, including the right to make any changes on any portion of the Conveyed Property as may be necessary for the operation or maintenance of any

aid to navigation or for any other navigational or related purpose;

- (d) Perpetual easements over and upon the Conveyed Property to produce sound not to exceed 136 decibels (A weighting) during periods of fog or haze, said sound to emanate from fog horns or other sound based aids to navigation located upon the U.S. Coast Guard Lot, said sound to be directed over the Chesapeake Bay, and said sound potentially constituting a human health hazard as further described and shown in the Grantor's "Foghorn Sound Level Survey," dated May 17, 2000, which has been provided to Grantee;
  - (e) In conjunction with the perpetual easement described in subparagraph 3(d) above, a perpetual negative easement over and upon an area that shall be referred to as the "Fog Detection Line of Sight Easement Area," which is delineated in Schedule A and further described in Schedule B, which is attached hereto and made a part hereof, for the purpose of preserving the line of sight for the fog detection device, wherein no building, tower, or other structure or improvement shall be permitted, constructed or maintained, nor any tree or other natural object shall be permitted or grown, nor any activity permitted that may, in any way, interfere with, obstruct, or obscure the aforesaid line of sight as determined by the Grantor;
  - (f) A perpetual easement to operate, maintain, inspect, repair, relocate, replace, or remove the lighted aid to navigation located in the Lantern Room;
  - (g) In conjunction with the perpetual easement described in subparagraph 3(f) above, a perpetual negative easement over and upon the Conveyed Property for the purpose of preserving the arc of visibility for the lighted aid to navigation located in the Lantern Room, said easement encumbering any portion of the Conveyed Property that lies between a line emanating from the center of the lighthouse tower on an azimuth of 340° T, sweeping clockwise to a line emanating from the center of the lighthouse tower on an azimuth of 220° T, wherein no building, tower, or other structure or improvement shall be permitted, constructed or maintained, nor any tree or other natural object shall be permitted or grown, that is of a height greater than 35 feet above mean low water, nor any activity permitted that may, in any way, interfere, obstruct, or obscure the arc of visibility as determined by the Grantor; and
  - (h) A perpetual easement upon the Conveyed Property to install, operate, meter, maintain, repair, relocate, replace, or remove utility, power, and communication lines, cables, and other related equipment, including but not limited to, electric and telephone lines, for the purposes of operating or maintaining any aid to navigation, for the purpose of supplying utilities, power, and communication access to the U.S. Coast Guard Lot, or for any similar or related purpose.
4. The aids to navigation identified in paragraph 3 above shall remain the personal property of the Grantor, and shall continue to be operated and maintained by the Grantor. The Grantee shall not have any obligation to maintain any aid to navigation on the Conveyed Property.

5. The Grantor may post signs on the Conveyed Property to warn of the sounds produced by the aids to navigation described in subparagraph 3(d) above.

### **Conditions and Covenants**

This conveyance is subject to the following conditions and covenants (paragraphs 6-21 below):

#### **Historic Preservation Covenant**

6. The Grantee covenants that:

- (a) It shall rehabilitate, preserve and maintain the Conveyed Property in accordance with plans approved in writing by the Division of Historical and Cultural Programs, Maryland Department of Housing and Community Development ("DHCP"), and in accordance with *The Secretary of the Interior's Standards for the Treatment of Historic Properties* (36 C.F.R. Part 68), in order to preserve and enhance those qualities that make the Conveyed Property eligible for inclusion in the National Register of Historic Places;
- (b) No construction, alteration, remodeling, changes of color or surfacing, or any other thing shall be undertaken or permitted to be undertaken on the Conveyed Property which would affect the structural integrity, the appearance, the cultural use, or archeological value of the Conveyed Property without the express prior written permission of the DHCP, signed by a fully authorized representative thereof;
- (c) The DHCP shall be permitted to inspect the Conveyed Property at any time, without notice, in order to ascertain if the Grantee is fulfilling or otherwise keeping the covenants described in this paragraph;
- (d) In the event of a violation of the covenants set forth in this paragraph, and in addition to any remedy now or hereafter provided by law, the DHCP may, following reasonable notice to the Grantee, institute suit to enjoin said violation or to require the restoration of the Conveyed Property;
- (e) The DHCP may, at its discretion, without prior notice to the Grantee, convey and assign all or part of its rights and responsibilities set forth in this paragraph to a third party;
- (f) The DHCP may, for good cause, and with the concurrence of the Advisory Council on Historic Preservation, modify or cancel any or all of the foregoing restrictions upon written application of the Grantee;
- (g) The failure of the DHCP to exercise any right or remedy granted under this Quitclaim Deed shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time; and
- (h) The covenants set forth in this paragraph shall constitute a binding servitude upon the Conveyed Property and shall be deemed to run with the land.

### **Endangered Species Act Covenant**

7. In compliance with the Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 *et seq.*), notice is given that the threatened northeastern beach tiger beetle, *Cicindela dorsalis dorsalis*, is present upon a tract of land immediately north of the Conveyed Property, standing now or formerly in the name of Columbia Gas, hereinafter referred to as the Columbia Gas Parcel, and may be present upon the Conveyed Property. The Grantee, in order to restrict access to the Columbia Gas Parcel from the Conveyed Property for the purpose of protecting the northeastern tiger beetle, hereby covenants as follows:
  - (a) That Grantee shall maintain, in perpetuity, the fence that runs along the boundary line between the Conveyed Property and the Columbia Gas Parcel to the mean high tide line of the Chesapeake Bay, said fence then running along and across the mean high tide line to a point in the Chesapeake Bay, as shown on Appendix A;
  - (b) That Grantee shall restrict public access to the Conveyed Property to organized classes, tours, and meetings, and at all other times keep the gate to the Conveyed Property, as shown on Appendix A, locked; and
  - (c) That Grantee shall take reasonable security measures to prevent unauthorized access to the Columbia Gas Parcel from the Conveyed Property.
8. The Grantee covenants that Grantor, acting by and through the Office of the Director, U.S. Fish and Wildlife Service, United States Department of the Interior, may:
  - (a) Enter the Conveyed Property at any time, without notice, to carry out its duties related to wildlife protection and enforcement;
  - (b) Inspect the Conveyed Property at any time, without notice, in order to ascertain if the Grantee is fulfilling or otherwise keeping the covenants described in paragraph 7 above;
  - (c) In the event of a violation of the covenants described in paragraph 7 above, and in addition to any remedy now or hereafter provided by law, following reasonable notice to the Grantee, institute suit to enjoin said violation or to require specific performance of any of the covenants described in paragraph 7 above;
  - (d) Without prior notice to the Grantee, convey and assign all or part of its rights set forth in this paragraph 8 to a third party; and
  - (e) For good cause, modify or cancel any or all of the covenants described in paragraph 7 above upon written application of the Grantee.
9. The failure of the Grantor, acting by and through the Office of the Director, U.S. Fish and Wildlife Service, United States Department of the Interior, to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.

10. The covenants set forth in paragraphs 7 and 8 above shall constitute a binding servitude upon the Conveyed Property and shall be deemed to run with the land.

### **Lighthouse Lantern Room Covenant and Lease**

11. The Grantee covenants that it shall prohibit members of the public, including but not limited to, visitors on tour of the Conveyed Property, from having physical access to, or otherwise entering, the Lantern Room. The Grantee may mount a camera in the Lantern Room to allow members of the public to view the interior of the Lantern Room from another location.
12. The Grantee covenants that upon its acceptance of this Quitclaim Deed, it will lease the interior of the Lantern Room to the Grantor, without payment of consideration, for a term of twenty years, such term to commence immediately upon the Grantee's acceptance of the quitclaim deed.

### **Reverter Provision**

13. Pursuant to subsection 1001(b)(2)(A)-(B) of Public Law 104-324, all right, title, and interest in and to the Conveyed Property shall immediately revert to the Grantor:
  - (a) If the Conveyed Property, or any portion thereof, ceases to be
    - (i) Used as a nonprofit center for the interpretation and preservation of maritime history;
    - (ii) Maintained in a manner that ensures its present or future use as a site for aids to navigation; or
    - (iii) Maintained in a manner consistent with the provisions of the National Historic Preservation Act of 1966 (16 U.S.C. § 470 *et seq.*); or
  - (b) Upon the thirtieth day after the Grantee received written notice from the Grantor that the Conveyed Property is needed for national security purposes.

### **Condition of Conveyed Property**

14. The Grantee attests by its acceptance of this Quitclaim Deed that it has inspected, is aware of, and accepts the condition and state of repair of the Conveyed Property. It is understood and agreed that the Conveyed Property is conveyed "AS IS" and "WHERE IS" without any representation or warranty on the part of the Grantor to make any alterations, repairs, or additions. The Grantor shall not be liable for any latent or patent defects in the Conveyed Property, except to the extent required by applicable law. The Grantee acknowledges by acceptance of this Quitclaim Deed that the Grantor has made no representation or warranty concerning the condition and state of repair of the Conveyed Property nor any agreement or promise to alter, improve, adapt or repair the Conveyed Property which has not been fully set forth in this Quitclaim Deed.



### **Fog Horns Covenant**

15. By the act of accepting and recording this Quitclaim Deed, Grantee expressly understands that the sound emitted from the fog horns or other sound based aids to navigation located upon the U.S. Coast Guard Lot, as described in subparagraph 3(d) above, constitutes a potential human health hazard, and further, Grantee covenants that it will take all reasonable precautions to protect its employees, agents, contractors, representatives, invitees and licensees from such hazard, including but not limited to, prohibiting invitees or licensees from entering or otherwise having access to the Fog Detection Line of Sight Easement Area, as delineated in Schedule A and further described in Schedule B.

### **Other Conditions and Covenants**

16. The Grantee covenants that it shall not interfere or allow interference by others, in any manner, with:
  - (a) Any aid to navigation, including but not limited to, the obstruction of the fog detection line of sight and the arc of visibility;
  - (b) Any other personal property of the Grantor; or
  - (c) The Grantor's use of the U.S. Coast Guard Lot.
17. The Grantee covenants that from time to time, at its own cost and expense, it will repair and maintain the Conveyed Property in a proper, substantial, and workmanlike manner.
18. The Grantee covenants that it will not use, or allow or otherwise permit others to use, the Conveyed Property for residential purposes, except for the one story building, commonly known as "C Quarters," which is further identified and shown on Schedule A as "1 Story Frame," which shall be the residence of a resident manager.
19. If the Grantee charges an admission, access, or any other fee to the Conveyed Property, or any portion thereof, no person otherwise entitled to enter upon the Conveyed Property shall be required to pay such fee. Possession of a valid U.S. Department of Transportation, U.S. Coast Guard or U.S. Coast Guard Auxiliary identification card will be sufficient proof of the holder's entitlement to enter the Conveyed Property without charge.
20. The foregoing provisions, reservations, restrictions, conditions, and covenants of this Quitclaim Deed shall be inserted by the Grantee verbatim or by express reference in any deed or other legal instrument by which Grantee divests itself of either the fee simple title or any other lesser estate in the Conveyed Property.
21. By the act of accepting and recording this Quitclaim Deed, Grantee hereby covenants that it will be bound by the foregoing provisions, reservations, restrictions, conditions, and covenants of this Quitclaim Deed, and to perform to obligations herein set forth.

### **Comprehensive Environmental Response, Compensation, and Liability Act Compliance**

22. Pursuant to section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9620(h):
- (a) The disposal, release, and storage of any hazardous substances, into or upon the Conveyed Property, to the extent known at the time of execution of this Quitclaim Deed, is reflected in the “Environmental Site Assessment Certification Statement,” provided as Schedule C, which is attached hereto and made a part hereof;
  - (b) The Grantor warrants that all remedial action necessary to protect human health and the environment with respect to any hazardous substance remaining on the Conveyed Property has been taken before the date of execution of this Quitclaim Deed;
  - (c) Any remedial action arising from the Grantor’s ownership of the Conveyed Property found to be necessary after the date of transfer to the Grantee shall be conducted by the Grantor; and
  - (d) The Grantor shall retain a right of access to the Conveyed Property in order to effectuate any necessary remedial action or corrective action until such time as the remedial action or corrective action is complete.

### **Notice Of The Presence Of Possible Lead-Based Paint**

23. The Conveyed Property contains residential dwellings constructed prior to 1978. The Conveyed Property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the purchaser with any information on lead-based paint hazards from risk assessments or inspections in the seller’s possession and notify the buyer of any known lead-based paint hazards. (NOTE: Other than the Environmental Site Assessment Certification Statement, which is attached as Schedule C, the Grantor has no such assessments or inspections in its possession).
- (a) A risk assessment or inspection for possible lead-based paint hazards is recommended to be undertaken by Grantee prior to acceptance of the deed.
  - (b) The Grantor assumes no liability for damages for personal injury, illness, disability or death to the Grantee’s successors, assigns, employees, invitees, or any other person subject to Grantee’s control or direction, or to any other person, including members of the general public, arising from or incident to the existence of lead-based paint at the Conveyed Property, or the transportation, removal, handling, use, or disposition of such lead-based paint, or any other activity causing or leading to contact of any kind whatsoever with such lead-based paint, whether the Grantee has properly warned or failed to warn the individual(s) injured.

### **Notice Of The Presence Of Asbestos-Containing Materials**

24. The Grantee is warned that the Conveyed Property contains asbestos-containing materials. Asbestos is a hazardous material. Unprotected exposure to asbestos fibers has been determined to significantly increase the risk of cancer, mesothelioma, and asbestosis. These diseases can cause serious bodily harm resulting in disability or death.
- (a) The Grantee has been invited, urged, and cautioned to inspect the Conveyed Property as to its asbestos content and any hazardous or environmental conditions relating thereto. The Grantee shall be deemed to have relied solely on their own judgment in assessing the overall condition of all or any portion of the Conveyed Property, including any asbestos hazards or concerns.
  - (b) No warranties, express or implied, are given with regard to the condition of the Conveyed Property including, but not limited to, whether the Conveyed Property does or does not contain asbestos or is or is not safe for a particular purpose. The failure of the Grantee to inspect, or to be fully informed as to the condition of all or any portion of the Conveyed Property, shall not constitute grounds for any claim or demand against the Grantor, whether direct or in a third-party capacity.
  - (c) The Grantor assumes no liability for damages for personal injury, illness, disability or death to the Grantee's successors, assigns, employees, invitees, or any other person subject to Grantee's control or direction, or to any other person, including members of the general public, arising from or incident to the existence of asbestos at the Conveyed Property, or the transportation, removal, handling, use, or disposition of such asbestos, or any other activity causing or leading to contact of any kind whatsoever with such asbestos, whether the Grantee has properly warned or failed to warn the individual(s) injured.
  - (d) The Grantee further agrees by acceptance of this Quitclaim Deed for itself, its successors and assigns, and each successor in interest to the Conveyed Property or any portion thereof, that in its use and occupancy of the Conveyed Property, it will comply with all Federal, State, and local laws relating to asbestos.

### **Notice of the Presence of Underground Storage Tanks**

25. The Grantee is hereby notified that underground storage tanks are located or may have been located upon the Conveyed Property, as described in the Environmental Site Assessment Certification Statement which is attached as Schedule C. These tanks may contain or may have contained petroleum, oil, or other materials hazardous to human health and the environment.
- (a) The Grantee has been invited, urged, and cautioned to inspect the Conveyed Property as to any underground storage tanks that are or may have once been present and any hazardous or environmental conditions relating thereto. The Grantee shall be deemed to have relied solely on their own judgment in assessing the overall condition of all or

any portion of the Conveyed Property, including any hazards related to underground storage tanks.

- (b) No warranties, either express or implied, are given with regard to the condition of the Conveyed Property including, but not limited to, whether the Conveyed Property does or does not contain underground storage tanks or is or is not safe for a particular purpose. The failure of the Grantee to inspect, or to be fully informed as to the condition of all or any portion of the Conveyed Property, shall not constitute grounds for any claim or demand against the Grantor.
- (c) The Grantor assumes no liability for damages for personal injury, illness, disability or death to the Grantee's successors, assigns, employees, invitees, or any other person subject to Grantee's control or direction, or to any other person, including members of the general public, arising from or incident to the presence of underground storage tanks at the Conveyed Property, or the transportation, removal, handling, use, or disposition of such underground storage tanks, or any other activity causing or leading to contact of any kind whatsoever with such underground storage tanks, whether the Grantee has properly warned or failed to warn the individual(s) injured.

#### **Notice of the Presence of Jurisdictional Wetlands**

- 26. The Grantee is hereby notified that jurisdictional wetlands, constituting Waters of the United States, are located upon the Conveyed Property, south of the chain link fence and septic area, which are delineated on Appendix A. The Grantee further agrees that by acceptance of this Quitclaim Deed, its use and occupancy of the Conveyed Property will comply with all Federal, State, and local laws relating to wetlands, including obtaining any and all required permits for any activity it may undertake on the Conveyed Property.

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**In WITNESS WHEREOF**, the Grantor, acting by and through the Secretary of Transportation, has caused these presents to be executed this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

UNITED STATES OF AMERICA  
ACTING BY AND THROUGH THE  
SECRETARY OF TRANSPORTATION

---

[MLC Commander or designee]  
[title/office]  
U. S. COAST GUARD  
[city, state]

**WITNESS:**

---

(SEAL)  
[witness name]  
[title/office]  
U. S. COAST GUARD  
[city, state]

---

(SEAL)  
[witness name]  
[title/office]  
U. S. COAST GUARD  
[city, state]

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_ 2000,  
\_\_\_\_\_ personally appeared before me, known to me to be the  
person who executed the hereunto QUITCLAIM DEED, and who acknowledged the execution  
thereof to be his official act.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_ day of  
\_\_\_\_\_ 2000.

My commission expires:

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This Deed was prepared by:

[name of preparing attorney]  
[title]  
[servicing legal staff address]

## GLOSSARY

The following definitions apply throughout this Manual.

1. Acquired land: Real property that the United States acquired from another party, except for real property acquired from a foreign government. Thus, the term usually refers to real property that the Federal government acquired by purchase, exchange, donation, or condemnation from a private individual or entity, or a state or local government.
2. Appraisal: A written statement estimating the fair market value of the subject real property as of a specific date, supported by the presentation and analysis of relevant market information. There are three methods or approaches to estimating the fair market value of real property:
  - a. Market Approach: The market approach evaluates sales, listings, offerings, or rental data of properties comparable to the real property that may be acquired. The appraiser shall verify the sales, listings, offerings, or rentals of comparable properties with the buyer, seller, broker, tenant or other person having specific knowledge of, or access to, this data. The appraiser's analysis shall include factors such as the date of each given transaction, property location, and other physical and economic characteristics. The analysis shall exclude any enhancement of the comparable properties' values that results from the Coast Guard's project.
  - b. Cost Approach: The cost approach evaluates the real property's replacement cost, usually in terms of replacing improvements, less depreciation. The appraiser shall note physical deterioration and functional and economic obsolescence of the subject real property.
  - c. Income Approach: If the sales data is inadequate, and the real property is income producing, the income approach may be used. The income approach evaluates capitalization of income produced by the real property. Such evaluation includes verification of the income and expenses and establishment of the capitalization rate. This approach should only evaluate the income that the real property itself will produce as opposed to income produced from the use of the real property as a mere site for a business enterprise.
3. Condemnation: The legal process in which the United States exercises its power of eminent domain and takes control of non-Federal property for Federal use. Either a fee simple or a lesser interest may be taken. A condemnation proceeding will be filed in the United States District Court that has jurisdiction over the geographic area in which the subject real property is located. The owner of the property interest taken must receive "just compensation" for the property. Just compensation is determined through the appraisal process.
4. Disposal Agency: The agency responsible for disposing of the subject real property, and any related property, by either transfer to another Federal agency or conveyance to a non-Federal

entity. Depending upon the statutory authority under which a disposal action is taken, the disposal agency may or may not be the same as the holding agency.

5. Easement: A non-possessory interest in another's real property. The easement holder has the right to use the subject real property for a specific, limited purpose. Typical examples include access easements and utility line easements. "Negative" easements are those which prescribe the fee simple owner's use of the subject real property. For example, an air rights easement prohibits the fee simple owner from constructing buildings or growing trees above a certain height. The easement holder does not have the legal right to exclude the fee simple owner or third parties from the area covered by the easement. Easements are generally permanent interests, although they can be extinguished by operation of law.
6. Encumbrance: Any right, interest or claim in or upon the subject real property held by an individual or other entity that is not the fee simple owner of the property. By their nature, encumbrances restrict the scope of the fee simple. Encumbrances include rights, interests, and claims used to secure a monetary obligation such as mortgages and liens, real property interests less than a fee simple, such as easements and leaseholds, and restrictions on the use of real property, such as restrictive covenants.
7. Fee Simple: The legal term used to describe the most comprehensive and extensive interest or estate in real property that can be held by any individual or entity under the law. The fee simple constitutes complete, permanent, and unrestricted ownership of the subject real property. All other interests in real property (*e.g.*, leaseholds and easements) are of a lesser nature than the fee simple. The fee simple owner holds the legal title to the real property. As such, the fee simple owner has the legal right to exclusively and permanently occupy and possess the real property. In all Federal real property acquisitions, the United States of America becomes the fee simple owner and therefore holds title to the real property. The Coast Guard (through the Department of Transportation) is merely the Federal agency that has administrative control and custody over the subject real property.
8. General Services Administration (GSA): The Federal agency tasked with administering the Federal Property and Administrative Services Act of 1949 and other applicable Federal property laws.
9. Holding Agency: The executive agency that has administrative control, custody, and accountability for the subject real property. Except as prescribed by the Federal Property and Administrative Services Act of 1949 or other applicable law, the holding agency normally bears the responsibilities of protection and maintenance, security, and environmental remediation.
10. Improvements: Any building, structure, or fixture that is permanently affixed upon land.
11. Leasehold: An interest in the subject real property held by one party (the tenant or lessee) which was granted by the real property's fee simple owner (the landlord or lessor), usually in return for rent. The "lease" is the contract between the landlord and the tenant. An essential element of the leasehold is the tenant's or lessee's right to exclusively occupy and



possess the subject real property or a portion thereof. The landlord or lessor retains the legal title to the subject real property and the right to repossess the subject real property at the conclusion of the lease. Leaseholds are not permanent interests in real property; they usually exist for a set period of time.

12. Legal Description: A description of real property that is accurate and complete enough such that the specific real property can be located and identified. A legal description usually concerns the boundaries of a given parcel of land. The legal description should identify and describe any encumbrances upon the real property, such as easements. Most legal descriptions are by government survey, metes and bounds, or lot numbers of a recorded plat.
13. License: Permission given by the fee simple owner (the licensor) to another party (the licensee) to enter upon the subject real property for a specific purpose. A license does not constitute an interest in real property. The licensee does not have the right to occupy, possess, or exclude others from the subject real property. The licensee only has the mere right to enter upon the real property for a specific purpose. As such, the license makes an act that would otherwise be trespass, a legal act. Licenses are revocable at will by the fee simple owner. Typical examples would be licenses to hunt, fish, or camp upon the subject real property.
14. Personal Property: Generally any property except real property, including but not limited to equipment, furniture, and vehicles. Personal property tends to be movable and is not permanently affixed to land.
15. Public Domain Land: Real property, generally unimproved land, which has never been owned by anyone other than the United States, with the exception of a foreign government.
16. Real Property: Land, and any interests in land, together with the improvements, if any, located thereon.
17. Related Personal Property: Any personal property that is an integral part of real property or is related to, designed for, or specially adapted to the functional or productive capacity of the real property, and removal of this personal property would significantly diminish the economic value of the real property. Common use items, including but not limited to general-purpose furniture, utensils, office machines, office supplies, or general-purpose vehicles, are not considered to be related personal property.
18. Reversionary Interest: A future interest in real property, held by a party other than the fee simple owner, which may be triggered upon the occurrence of some event or the satisfaction of some condition. If the event occurs, or the condition is satisfied, the reversionary interest becomes effective, and the title to the property will, by operation of law, convey from the fee simple owner and vest in the holder of the reversionary interest. For example, X conveys real property to Y subject to a reversionary interest premised upon the condition that Y can only use the real property for recreational purposes. If Y builds a factory on the property, the real property will revert to X (the legal title will convey back to X). A fee simple interest burdened by a reversionary interest is known as a defeasible fee.

19. Servicing Environmental Staff: The staff of environmental specialists responsible for performing environmental compliance and assessment functions for any unit located within the staff's area of responsibility. The servicing environmental staff may be located at the MLC or CEU level.
20. Servicing Legal Staff: The staff of Coast Guard attorneys, military and civilian, responsible for providing legal advice on real property, environmental, and related matters to the servicing real property, environmental, and shore facility planning staffs and the unit concerned. The term "servicing legal staff" does not include attorneys employed by other Federal agencies, attorneys employed by contractors or other non-Federal entities, or attorneys in private practice.
21. Servicing Real Property Staff: The staff of real property specialists responsible for performing real property functions for any unit located within the staff's area of responsibility ("AOR"). Presently, MLCPAC(sr) is the servicing real property staff for the MLCPAC AOR. The servicing real property staff for the MLCLANT AOR is decentralized and located at the CEU level (CEUs Cleveland, Miami, and Providence).
22. Servicing Shore Facility Planning Staff: The staff of MLC or CEU planners responsible for providing shore infrastructure planning support to the unit concerned.
23. Unit or Unit Concerned: Refers to the Coast Guard organizational element that requires the subject real property to perform its assigned missions or functions.

## NUMERICAL LISTING OF FORMS

CHAPTER	TYPE	#	NAME	S/N	JETFORM.
3	SF	118	Report of Excess Real Property	7540-00-634-4069	YES
3	SF	118A	Schedule A – Buildings, Structures, Utilities	7540-00-634-4070	YES
3	SF	118B	Schedule B - Land	7540-00-634-4071	YES
3	SF	118C	Schedule C – Related Persona Property	7540-00-634-4072	YES